

No. 11638

---

United States  
Circuit Court of Appeals  
For the Ninth Circuit

---

LOCAL 36 OF THE INTERNATIONAL FISHERMEN AND  
ALLIED WORKERS OF AMERICA, JEFF KIBRE,  
GILBERT ZAFRAN, CLIFFORD C. KENNISON, F. R.  
SMITH, GEORGE KNOWLTON, OTIS W. SAWYER,  
W. B. McCOMAS, HARRY A. McKITTRICK, ARTHUR  
D. HILL, C. LLOYD MUNSON, CHARLES McLAUCH-  
LAN, ROBERT M. PHELPS, BURT D. LACKYARD,  
and RAY J. MORKOWSKI,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

Transcript of Record  
In Six Volumes  
VOLUME III  
Pages 943 to 1422

---

Upon Appeal from the District Court of the United States  
for the Southern District of California  
Central Division

DEC 11 1947



No. 11638

---

United States  
Circuit Court of Appeals

For the Ninth Circuit

---

LOCAL 36 OF THE INTERNATIONAL FISHERMEN AND  
ALLIED WORKERS OF AMERICA, JEFF KIBRE,  
GILBERT ZAFRAN, CLIFFORD C. KENNISON, F. R.  
SMITH, GEORGE KNOWLTON, OTIS W. SAWYER,  
W. B. McCOMAS, HARRY A. McKITTRICK, ARTHUR  
D. HILL, C. LLOYD MUNSON, CHARLES McLAUCH-  
LAN, ROBERT M. PHELPS, BURT D. LACKYARD,  
and RAY J. MORKOWSKI,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

Transcript of Record

In Six Volumes

VOLUME III

Pages 943 to 1422

---

Upon Appeal from the District Court of the United States  
for the Southern District of California  
Central Division

---





(Testimony of George F. Naylor.)

Q. They have sold you fish?

A. Yes, I think most of them have.

Q. One of these defendants has some of your nets now, hasn't he?

A. Yes, sir. I understand that he is going to give them back to me, though. He doesn't want them.

Q. He is otherwise occupied at present?

A. That's right. We are all good friends in spite of this. [1653]

Q. Now you buy both cannery and market fish, don't you?      A. That is right.

Q. The species of fish—what species of fish do you buy for the canneries?

A. We buy all of the tuna varieties and mackerels and sardines.

Q. Where do you ship that cannery fish that you buy?

A. Well, most of it is delivered into Long Beach and the San Pedro area; Wilmington, San Pedro and Long Beach area.

Q. Isn't there some fish delivered to San Diego and some to Long Beach?

A. Well, I will tell you, in the past we have delivered some cannery fish to San Diego but it has been a negligible quantity.

Q. What percentage of the total fish that you buy is cannery fish?

A. Well, let me see. It varies with the run of fish. I will tell you what—

(Testimony of George F. Naylor.)

Q. What would you say it was during 1946, approximately?

A. 1946, I will say that fully 50 per cent of the fish, in dollars and cents value, was delivered to the canneries.

Q. Was that an unusual year in that respect, would you say?      A. No.

The Court: What do you do, haul the fish from your place [1654] to the canneries?

The Witness: That is right.

The Court: That is what you use the trucks for?

The Witness: That is right. We can haul a lot of fish in each one of those boxes.

The Court: You put them in boxes?

The Witness: No, sir, we just put them in in the truck loose.

Q. (By Mr. Margolis): Do you make reports to the Fish and Wildlife Service?

A. We make reports to the Fish and Game, to the California State Fish and Game. The California state law requires that all fish purchases must be made on their forms and a triplicate copy of that form is returned to the California State Fish and Game.

The Fish and Wildlife Service call us on the phone every morning and ask for the fares that have been received the day previously.

Q. For the fish that has been received?

A. Yes.

Q. What if anything do you give them?

(Testimony of George F. Naylor.)

A. We give them the actual figures in weight.

Q. Of all fish received?

A. Of all varieties of fish that we receive; yes.

Q. Do you pay the same price at any given time for [1655] fish to fishermen who bring in fish on your own boats as you do the fishermen who bring in fish on other boats?

A. That is right.

Q. There is no difference?

A. Occasionally they have come in and caught the market right and got a little bit more than the others, or the independent fishermen may have done that. But as a regular thing we make no—we show no preference at all in the price that we pay our own boats and the price we pay the independent fishermen.

Q. Do you pay the same price for cannery fish as for market fish for the same species?

A. To the fishermen?

Q. Yes.            A. Yes.

Q. How do you determine at any given time what price you pay for your fish?

A. Well, it is not a very complicated matter. We know what we are going to get for the fish, or we think we can sell them for, and we know what our overhead is, the cost of handling the fish, and the cost of boxing, icing, and so forth, and what we ought to make in the way of profit, and that is the way the price of fish is computed.

The Court: Do you have regular customers?

The Witness: Surely, we do. [1656]

(Testimony of George F. Naylor.)

The Court: I mean people who buy from you all the time?

The Witness: Yes.

The Court: Is there a change in that?

The Witness: Oh, there is some change in that. Everybody that is in business loses customers and gains new ones, but for the most part our customers that we sell to we have been dealing with for a good many years.

The Court: And is their demand for quantity about the same?

The Witness: No, it is seasonal.

The Court: I mean the same customers take about the same amount of fish every year?

The Witness: Well, I wouldn't even say that. You see, there are so many things that enter into it. For instance, there is the run of fish that you have. Some years you don't have any fish at all, like this spring, ordinarily we do a lot of mackerel business at this time of the year, just getting in the mackerel and we get all we want and more too. However, this spring there has been no mackerel at all. We have orders that we can't fill. Finally our customers get disgusted with us and cancel their orders.

So it is hard to say that your customers will use practically the same amount of fish all the time.

The Court: Who is a customer, for instance, a restaurant?

The Witness: We have some restaurants [1657]

The Court: Do you have restaurants for cus-

(Testimony of George F. Naylor.)

tomers or do you have markets for customers, which?

The Witness: I will explain it to you. We have restaurants. That is one type of customer. We have markets, that is, retail markets such as butcher shops and small retail fish markets that buy from us. That is another type of customer.

The Court: The retail fish market that buys from you, does he call you up and say, "I want half a ton of fish?"

The Witness: No. We have to run him down and sell it to him. It was true during the war that he would call us up, but now you have to go out and get them.

The Court: In other words, you have to sell them mackerel?

The Witness: You bet your life you do.

The Court: Or if you catch barracuda and these other varieties of fish?

The Witness: He gives you a tough time these days.

Then we have wholesale fish dealers, distributors, in Los Angeles such as the Superior Seafood, Paladini——

The Court: You do not need to name them.

The Witness: Then we have the canneries that buy from us, and then we have processors of vitamin oils that buy livers from us. So we have about six types of customer.

Mr. Margolis: Is your Honor through?

The Court: So the first factor that we know

(Testimony of George F. Naylor.)

which is [1658] more or less constant is that you know how much fish you can dispose of?

The Witness: Yes. We have an idea how much we can dispose of. Sometimes we are wrong—and how.

The Court: All right. Excuse me, counsel, for interrupting.

Q. (By Mr. Margolis): So that you take these various factors into consideration to determine how much you will pay for fish and then you tell the fishermen that that is what you will pay for the fish that is delivered, is that right?

A. That is correct.

Q. Is your rate of profit on fish always the same?

\* \* \*

The Witness: No, I should say it isn't. I will tell you why it isn't, for one reason: In the first place, most of our boats who go out for me know how much money they are going to get for the fish when they come back.

Q. (By Mr. Margolis): They do know that?

A. Absolutely.

Q. How do they know that?

A. Because I will tell them how much I am going to pay them for their fish when they come back, or my man does. [1659]

The Court: Before they leave?

The Witness: Before they leave; that is correct.

Q. (By Mr. Margolis): Does that include the fishermen who fish on boats you own as well as the fishermen who fish on boats you do not own?



(Testimony of George F. Naylor.)

A. That includes everybody.

Q. Do you agree to take their entire catch?

A. That is right. If I send a boat out for me and he is going to fish for me I take his entire catch at the price I tell him, if I tell him before he goes out what the price is going to be.

There are times that I don't tell them because the market may be wobbling and I don't know what I can pay him for them. Then I will tell them, "I can't guarantee any price when you go out," and if they choose to go out that is up to them.

But for the ordinary run of our business, we tell a fisherman how much he is goin to get before he goes out.

Q. So what happens is that the fisherman will come to you and say, "I want to go fishing, say, for barracuda, what will you pay me for a load of fish," and you say, "Six cents," or whatever it is?

A. Twenty cents, my friend.

Q. Twenty cents?

A. Yes. Let's not get down to the low brackets. It is [1660] bad.

Q. Twenty cents. I was thinking of——

A. Mackerel.

Q. ——mackerel. Twenty cents for barracuda, you say. So you say, "I will take whatever fish you bring in for 20 cents."

A. That is right, either that or I put them on a limit. I will say to them, "Well, you can bring in 500 or a thousand pounds or a ton or whatever you want." I may do that. But if I send a boat out on

(Testimony of George F. Naylor.)

a price when he goes out with no limit on him at all I will take all the fish he brings me when he comes in regardless of how much it is.

The Court: Or what kind of fish?

The Witness: Or what kind of fish, if I have agreed to take it.

Q. (By Mr. Margolis): You set the price for the particular species of fish though?

A. Yes.

Q. The price on various species differs, is that right?

A. That is right.

Q. So this man goes out, and say you have said that you will pay him 20 cents for barracuda, and he comes back with a load of barracuda, you take the entire load of barracuda and pay him 20 cents for it? [1661]

A. That is right.

Q. If you can't sell all of that fish, what do you do with the surplus, store some of it?

A. Well, I don't store much of it, I will promise you that. I sell it, and if I can't get my money out of it I will take less. I recall one instance very well when Art Hill over there brought me a load of barracuda about four years ago, he and about 20 other boats, and we paid them 29 cents for it—that was on a Friday or Saturday—and the following Monday morning we found that the market was 12½ cents delivered in Los Angeles.

Q. What did you do?



(Testimony of George F. Naylor.)

A. We didn't store any of that fish; we sold it and took our loss right there.

Q. Do you have storage facilities?

A. Oh, yes.

Q. In your own plant?

A. That is right.

Q. Both at Newport and—do you have storage facilities in Los Angeles also?

A. Yes, that is right.

Q. To what extent do you have storage, for how much fish?

A. At Newport Beach? Are you talking about freezing facilities or just storage facilities? [1662]

Q. I am talking first of all about storage facilities. In storage facilities you just ice the fish, isn't that right?

A. That is right. At Newport Beach we can handle it in our icebox—well, we have handled in our business approximately 25 tons of fish.

Q. How about Los Angeles?

A. And Los Angeles could have handled at that time perhaps another 20,000 pounds.

Q. One was 25 tons, you say, and the other was 20,000 pounds?

A. That is right.

Q. Or 10 tons.                   A. That is right.

Q. So between the two places at that time you had storage facilities for 35 ton of fish?

A. That is right.

(Testimony of George F. Naylor.)

Q. And you utilized those storage facilities, did you not?

A. Not very often.

Q. Didn't you utilize them at any time?

A. I never have utilized both of them, no. The only time we have ever utilized storage facilities at Newport Beach is when we would get in a big load and wouldn't have time to get it out that day. Then we would put the fish in our box [1663] and hold it until the following day and then it would go out. We make no attempt to hold our fish or keep it.

Q. Do you freeze any of your fish?

A. We can freeze some. As a rule we don't. We usually send it out to public storage.

Q. Where do you send it?

A. It all depends. Many times we have frozen fish in Los Angeles at the Los Angeles Ice & Cold Storage Company; we have held fish at the Union Ice & Cold Storage Company in Wilmington; and we have frozen and stored some fish at the Harbor Ice & Cold Storage at Newport Beach.

Q. What are the capacities of those places for storage?

A. Oh, heavens, they have very large capacities. During the past two years there hasn't been much of that space available due to the fact that the government and everybody else was storing everything they could in them.

Q. During 1946 was space available?

A. During the war there was very little space available anywhere to store.

(Testimony of George F. Naylor.)

Q. During 1946 was space available when you wanted it?

A. We didn't want any in 1946.

Q. You weren't looking for any?

A. No. All you had to do was when a customer called up and said, "I want a ton of fish," you would say, "Sorry, I can only give you 500 pounds." The demand was greater than the [1946] supply. That was easy going.

Q. You didn't have any problems in 1946?

A. No problems of sale whatsoever.

Q. Of the kind you referred to four years ago when you had that situation?

A. That is right. The war was going on then too by the way.

Q. Now when you freeze fish you sometimes keep it in storage for a long time, isn't that so?

A. Well, we never carry it over unless we can't get rid of it from one season to another.

Q. You carry it, for example, from one season when there is a lot of fish coming in to the next season when there is little or no fish coming in, is that right?

A. Well, it has never been our policy to do that. There are dealers that do that, but it has never been our policy to do that.

Q. Don't you sell fish during the off season?

A. Sure, but I sell fresh fish.

Q. How long have you kept fish that you stored, have you kept it for a year?

A. Oh, sure. There have been times when I have been stuck that I have kept it for a year.

(Testimony of George F. Naylor.)

The Court: Is that material, counsel?

Mr. Margolis: I think it is. [1665]

The Court: I cannot see how it is.

Mr. Margolis: I think it is.

The Court: Unless you are prepared to show that he caught and stored fish during this period in question I can't see its materiality.

Mr. Margolis: I think it is material, your Honor, from the standpoint of the economic position of the dealer with relation to the fishermen.

Mr. Schwartz: And that question, we submit, is not material to the issue at all.

The Court: That is not material at all, counsel.

Mr. Schwartz: The economic conditions of the defendants have nothing to do with this case.

Mr. Margolis: I submit that it is under the rule of reason, your Honor.

The Court: It is not material. [1666]

\* \* \*

(The following proceedings were had in the presence of the jury):

\* \* \*

Mr. Margolis: I understand counsel has located the letter which is referred to on Government's 37, and at this time I ask that it be produced.

Mr. Schwartz: At this time, if the Court please, the government withdraws its offer of Exhibit 37, for identification.

Mr. Margolis: I don't know what the government is trying to conceal.

(Testimony of George F. Naylor.)

Mr. Schwartz: I object to any statement Mr. Margolis may make about concealment. I am not trying to conceal anything from the court or the jury. In my opinion that letter is not material to the issues. [1670]

Mr. Margolis: That is for the court to decide.

Mr. Schwartz: And rather than make an issue about it, I have decided to withdraw Exhibit 37, for identification.

The Court: Here we have had a nice long recess and I thought everybody would be in a good humor.

Mr. Margolis: We are in a very good humor. We just think we ought to go through with this.

The Court: Let me see now. You are withdrawing your offer of Exhibit 37, for identification,—

Mr. Schwartz: Yes, your Honor.

The Court: —in evidence.

Mr. Schwartz: Yes, your Honor.

The Court: It remains for identification?

Mr. Schwartz: Yes, your Honor.

The Court: The contents of the exhibit have not yet been gotten to the jury.

Mr. Margolis: I ask your Honor, having gone into the matter, that the government be directed to produce, so that we can see it and offer it in evidence, the document which is referred to in Government's Exhibit 37. If it is material it ought to get into this record.

The Court: It hasn't got into the record.

Mr. Schwartz: Nor has it been gone into.



(Testimony of George F. Naylor.)

The Court: Nor have the contents of the letter been exhibited to the jury. [1671]

Mr. Margolis: I ask that we have an opportunity to see it, your Honor.

The Court: The government has the right to withdraw their offer in evidence if they wish to.

Mr. Margolis: I understand that, but——

The Court: And they have withdrawn it.

Mr. Margolis: I request that we be allowed to see that exhibit. Your Honor has the power to order the government to produce for inspection this document, and I think we ought to be able to see it.

The Court: I have the power to order them to produce something which they expect to rely on or produce in court. I don't have the power to order the government to produce everything they may have in the files.

Mr. Margolis: If it is material to the case——

Mr. Schwartz: I insist it is not material, and that is the reason I am withdrawing the offer.

The Court: It is withdrawn. We will proceed.

Mr. Margolis: I want the record to show that we would like to have the record complete.

The Court: The record is complete.

Mr. Margolis: Not with Exhibit 37 or the letter referred to.

The Court: It remains for identification.

Mr. Margolis: If your Honor please, at this time, then, [1672] I move to strike all of this witness' testimony with relation to Government's Exhibit 37.

(Testimony of George F. Naylor.)

Mr. Schwartz: There has been no testimony with relation to Exhibit 37, except that he received it. It hasn't gone to the jury, nor has anything in that letter been read to the jury.

Mr. Margolis: We know it hasn't gone to the jury, but there has been testimony.

The Court: The motion is denied. It remains for identification.

Mr. Schwartz: If they want to offer 37, your Honor, they may.

The Court: We all know that.

Mr. Margolis: We want to offer the whole thing. Let's make that clear.

Mr. Schwartz: That is the whole thing. I insisted that it was at the time I made it.

The Court: Let me see now; we have wasted five minutes in a little acrimonious discussion. Let's get on and get some evidence here.

Q. (By Mr. Margolis): You sell fish to hotels, restaurants, canneries, and to other wholesalers, is that right?

A. And markets, yes.

Q. Do you sell the same species of fish at any given time to all of these outlets at the same price?

A. No.

Q. You get a different price——

A. That is correct.

Q. ——from one source than you do from another?

A. That is correct.

(Testimony of George F. Naylor.)

Q. Do you pay the fishermen a different price for the fish, depending upon where you are going to sell it?       A. No.

Q. So, for some of the fish that you get from a fisherman you will get a higher price when you sell it than for some of the other?

A. That is true, as far as the actual price that we sell it for is concerned. But with many of our orders that we sell and deliver, there is greater expense to it. For instance, if a restaurant buys 10 pounds of fish from you, you obviously can't deliver him 10 pounds of fish at the same rate per pound that you can if you deliver a cannery 50,000 pounds of fish. Naturally you would have to get more for a smaller delivery.

Q. Is that the only basis for the different price?

A. All of the expense attendant to small orders is greater per pound than the expense of larger orders.

Q. Do you sell fish to the wholesalers at the same price that you sell it to the canneries?

A. Sometimes. [1674]

Q. Sometimes different prices?

A. Sometimes at a different price. Sometimes at a lesser price.

The Court: Your price, then, is determined by quantity?

The Witness: That's right.

The Court: And delivery charges?

The Witness: That's right.



(Testimony of George F. Naylor.)

Q. (By Mr. Margolis): You determine the price which you sell the fish to any given outlet upon the basis of the cost to you plus a profit to you, is that right?

A. Sometimes that's right. Sometimes our prices are regulated by our competitors. We may be paying—for instance, we are paying today in Newport Beach 20 cents for barracuda; Santa Monica is paying 17 cents for that same barracuda; if we would get in a large supply of barracuda today, and Santa Monica would get in a large supply of barracuda today, it may be that Santa Monica would sell to the wholesale dealers in Los Angeles for 20 cents—well, obviously there is no profit in it for us if we are forced to meet a 20-cent market.

Q. You would then also have to sell for 20 cents and make no profit?

A. I don't think any of these markets in Los Angeles are so philanthropically inclined that they would be willing to pay us more for it.

Q. You would have to sell for 20 cents? [1675]

A. Tomorrow I would buy at 17 cents.

The Court: The question is what you paid 20 cents for you would have to sell at 20 cents?

The Witness: That is right.

Q. (By Mr. Margolis): And that is because fish from San Pedro was selling at 20 cents?

A. Yes, or maybe San Diego or Santa Ana, or any other port in Southern California.

Q. If at any given time you are able to buy fish for 17 cents, and San Pedro was paying 20 cents

(Testimony of George F. Naylor.)

for it, you would be able to get a better price for your fish as a result of that, isn't that right?

A. That is correct. However, none of these things were applicable from January 1st to July 1st of 1946, because we had the O.P.A. that regulated all of our prices. However, they did allow a differential in the prices to canneries, wholesale markets, retail markets, and restaurants. [1676]

Q. In other words, during that period you were selling all of your fish at the ceiling price, is that right?

A. That is correct.

Q. Were you always paying the fishermen the ceiling price for fish?

A. I never paid them less.

Q. You never paid them less? A. No.

Q. You know that other dealers paid them less?

A. Yes, of course I do.

The Court: Mr. Naylor, by the way, in some businesses, in the food business, the milk business, for instance, it said that there had to be a 20 per cent excess of the demand in order to meet the supply because it fluctuates up and down. Is that true in the fish business too?

The Witness: It fluctuates even more than the milk business does.

The Court: The demand for fish?

The Witness: That is right. The demand fluctuates and the production fluctuates. Fish are unpredictable. You can't tell whether today you are going to have 100 tons or whether you are going to have 100 pounds.

(Testimony of George F. Naylor.)

The Court: What I mean to say is, in the milk business for a given area they have to figure that there is 20 per cent more than the normal supply because of the fluctuation in order [1677] to meet the demand. Do you calculate in your business on having a percentage in excess of your actual supply?

The Witness: Yes, that is what we try to do.

The Court: Do you succeed in doing that?

The Witness: Generally we do. Sometimes our guess is bad.

The Court: I see.

Q. (By Mr. Margolis): In your direct testimony you referred to buying fish at the market price. Can you tell us what you meant by the words "market price"?

A. Yes, I will. My competitor down the street, if he was paying 20 cents for barracuda, and my fishermen are independent, even my own boats are that way, if I don't pay as much for fish as he pays then I don't get any fish. If I don't want them, that is perfectly satisfactory to me. I would like to have him go down there. But if I need the fish then I will either have to meet his price or I will have to do without the fish.

Q. In other words, the market price then that you refer to is the price which you yourself and other wholesalers pay in order to buy fish at any given time?

A. I think you will find that your competitor regulates your price, the price that you buy at and the price that you sell at. [1678]

(Testimony of George F. Naylor.)

Q. In other words, you and your competitors buy and sell at the same prices, generally speaking, is that right?

A. Well, not always. There is the instance where Santa Monica pays 17 cents for barracuda and we pay 20 cents for it.

The Court: I think he means your competitors in the immediate vicinity, isn't that what you mean?

Mr. Margolis: Well, yes.

The Witness: Even that isn't true because frequently we pay more than our competitors do. It depends on how bad we want the fish, what we have it sold for. We know our business. We know what we can expect to get out of our fish.

Q. (By Mr. Margolis): What did you mean when you said you buy your fish at the market price?

A. That means my market price, the price that I have.

Q. Is that what you meant when you said that?

A. Certainly. I don't mean a market price that is in effect everywhere. I run my own business. If I want to pay 20 cents for barracuda, I pay 20 cents. If I want to pay 25 cents, I pay 25 cents for it. I know what I will be able to sell it for. If I get in a very large amount of barracuda, then obviously if I am going to make a profit at it I have to be able to offer it to my trade at the same price that my competitors offers it at. And so I judge my price accordingly. [1679]

(Testimony of George F. Naylor.)

Q. In other words, when you said, "We buy our fish from fishermen at whatever the market price happens to be," what you meant was that you buy your fish from fishermen at whatever you think you can pay, is that what you meant?

A. That is correct. If somebody else happens to be paying 20 cents and I need the fish, and maybe I have only been offering 18 cents for barracuda, if I want that fish I will pay 20 cents. Maybe I will pay 22 cents. It all depends.

Q. That is what you meant when you referred to market price, is that right?

A. That is correct.

Q. Now you also said in turn that you sell your fish at whatever the market is?

A. Sure.

Q. What do you mean by that?

A. Well, I mean to say that if I can buy barracuda for 20 cents a pound and sell it for 25 cents a pound, that is my market price.

Q. You meant by market price whatever price you can get for your fish?

A. I may sell my fish at 23 cents a pound against a 24 cents a pound price out of San Pedro, or I may sell it at 22 cents as against a 24-cent price out of Santa Monica.

Q. When you refer to market price you meant whatever price you felt you personally could pay?

A. Sure.



(Testimony of George F. Naylor.)

Q. Whatever price you felt you personally could sell it for?      A. That is correct.

Q. That is your conception of the term market price?      A. That is the conception.

Q. How many boats fish regularly out of Newport Beach?

A. I am not prepared to state offhand how many boats fish out of Newport Beach. I imagine there is at least 200.

Q. How many boats do you buy fish from regularly?

A. At the present time I don't think that I buy from over 20.

Q. What was the situation in 1946?

A. It was practically the same.

Q. How many different boats do you buy from over the course of the year?

A. Well, of course there are some transient boats that come in from San Pedro, San Diego and Santa Barbara, other localities, that will swell that number somewhat. I would say that throughout the year I might buy fish off of 50 different boats.

Q. What percentage of the fish that you buy comes from boats which you do not own, which you do not charter or operate, where you have no loans advanced, where you do not own the nets which are used, or in which you have no other form [1681] of interest?

(Testimony of George F. Naylor.)

A. I would say that I bought fully 50 per cent of my fish from such boats.

However, the fact that a boat has my gear doesn't necessarily mean that he is obligated to sell me his fish. I expect him to sell me his fish, but there is no obligation there. I think that we have had some gear on Lloyd Munson's boat. He brought us some of the fish and some of the fish he delivered elsewhere. It is kind of like letting one hand wash the other. If we help some fishermen we expect naturally that he will reciprocate. I think he feels the same way about it.

Q. Of course you are at liberty at any time you want to to take that gear away from Mr. Munson, are you not?

A. That is correct, but I haven't done it.

Q. During the year 1946 you handled, I believe you said, anchovies and sardines for bait purposes?

A. That is right, and for salting too.

Q. For salting? For what purpose?

A. For food.

Q. Where do you sell the sardines and anchovies?

A. They are sold down in—let's see, we made shipments to Honolulu, to the Philippines, to Chinese ports, and down into the West Indies.

Q. Is this during 1946?                      A. 1946; yes.

Q. What quantities of anchovies and sardines were you handling then during that period?

A. Well, just prior to May we were handling—

(Testimony of George F. Naylor.)

oh, heavens—sometimes as much as 20 ton of fish a day, and sometimes as little as two or three tons, depending on what the boats caught and what our orders were.

Q. When you say a fish, are you referring now to anchovies and sardines?

A. I am referring to anchovies and sardines.

Q. In addition to all the other species of fish?

A. That is right.

Q. From what boats did you buy anchovies and sardines?

A. We bought anchovies and sardines from the boat Maude and the boat Cerio, from the boat Reliance, and I think we bought some from a boat Endeavor too.

The Court: Anchovies and sardines, they have to fish for them by the dark of the moon, do they not?

The Witness: For cannery purposes they fish sardines during the dark of the moon, but local fishermen that fish out of Newport Beach fish anchovies and sardines both in the daytime.

The Court: And at night?

The Witness: And at night, but principally in the daytime, and then they can fish during any phase of the moon.

The Court: I see. [1683]

Q. (By Mr. Margolis): Who was your attorney in 1946? A. Vernon Gray.

\* \* \*



(Testimony of George F. Naylor.)

Q. Is that the attorney to whom you presented the contract which was given to you concerning which you have testified for his advice?

A. That is correct.

Q. Did you give it to any other attorney?

A. No.

Q. At the time that the contract was presented to you, [1684] who was present besides yourself, the first time the contract was presented to you?

A. I believe that Charlie McLauchlan and Bob Phelps presented that to me the first time. Maybe Mr. Lackyard was there but I don't remember.

Q. Are you sure Bob Phelps was there?

A. I am quite sure he was. However, this has been a long time ago; last May sometime.

Q. You might very well have been mistaken?

A. The three of them came to see me so often and several others that I seem to remember Bob and Charlie the best because they were there the oftenest.

Q. You have no distinct recollection of Mr. Phelps being there at that particular time?

A. No, but Charlie was there.

Mr. Schwartz: Charlie McLauchlan?

The Witness: Charlie McLauchlan; yes.

Q. (By Mr. Margolis): Now at that time did you look at the contract?

A. I just gave it a cursory examination and told them that I would submit it to my attorney, which I did.

(Testimony of George F. Naylor.)

Q. Did you say anything else to them?

A. Oh, I said if the contract is—if my attorney okays it, and so forth, and it is all right, I will be happy to sign it. I said I think that it would be a fine thing for [1685] myself to know that nobody else was paying less for the fish than I was.

Q. Did you say you thought that the contract was fair and reasonable?

A. I said that providing my attorney said it was legal, I would be happy to do it. Of course when they first presented the contract to me the only thing that was suggested in the contract was that there would be OPA prices maintained as far as possible, and that they would attempt to fix the prices on other species of fish later on.

Q. Did you tell them at that time that looking at the contract you thought it was fair and reasonable?

A. I don't remember whether I did or not.

Q. Do you remember whether you told them that in one of your subsequent conversations that you had with Mr. McLauchlan or Mr. Phelps or any of the other fishermen?      A. No, I don't. [1686]

\* \* \*

Q. Do you know whether wholesale dealers during the month of June 1946 located in Newport Beach, California, other than your own, were buying fresh fish from fishermen being there fishing at Newport Beach?      A. I do.

Q. Were they?      A. Yes.

Q. Do you know what date it was that the contract was presented to you?

A. I don't remember the exact date of it.

(Testimony of George F. Naylor.)

Q. Would you give us your best recollection as to the date?

A. Well, my best recollection is that it was some time in May.

Q. Would you say it was the first part of May, the middle of May or towards the end of May?

A. I could perhaps give you an exact date if I were in my office, but I would hesitate to say at this time. As I [1687] recall, it was sometime around the middle of May. As I remember, there was about six weeks of picketing.

Q. Let me ask you this: Do you remember the day on which the picket line was established?

A. No, I don't.

Q. Was it towards the end of May, the first of June?

A. I would say that it was approximately the middle of May.

Q. That the picket line was established?

A. As near as I can remember.

Q. Was this contract presented to you before or after the picket line was established?

A. Before the picket line.

Q. How long before?

A. I think it was four or five days before that.

Q. And did you have any other conversations with Mr. McLauchlan or any other men from the union between the time of the presentation and the time that you say the picket line was established?

A. I certainly did. They were down to see me several times.

(Testimony of George F. Naylor.)

Q. And that was during that four-, five-day period, is that right? A. That is right [1688]

Q. Do you know a fisherman by the name of Souder, S-o-u-d-e-r? A. Yes.

Q. Do you know one by the name of Lee?

A. Yes.

Q. You have loaned both of those fishermen money from time to time, have you not?

A. I think I have advanced them money at different times, yes.

Q. These two fishermen always bring in their fish to you, do they not?

A. Well, there are a number of the Souders, and Morris Souder has fished for me off and on for ten years, but he hasn't always brought me his fish. He has delivered fish to other dealers in Newport Beach many times during that period of time.

Q. He has always brought it to you first, has he not? A. What?

Q. He has always brought it to you first, has he not? A. Heavens, no.

Q. During the periods that he owed you money, he brought it to you first, has he not?

A. Not necessarily.

Q. Do you know whether or not he did?

A. I know, but I say not necessarily. I have known [1689] of instances when he has owed me money when he hasn't brought me the fish and hasn't given me the first offer on it.

(Testimony of George F. Naylor.)

Q. (By Mr. Margolis): Do you recall in 1944 you owned a boat known as the Tropic Bird?

A. Yes, sir.

Q. That boat was operated by a number of fishermen on the same basis as other boats that you own, is that right?

A. That's right.

Q. At that time a fisherman by the name of Andy Brockett was the skipper; do you remember that?

A. Well, Andy Brockett had the Tropic Bird for a while, I don't remember whether it was in 1944, it seems to me it was later than that.

\* \* \*

Q. (By Mr. Margolis): Do you recall a situation in 1944, [1690] or perhaps 1945, when Andy Brockett was operating the Tropic Bird, a boat that you owned, and brought in some fish and delivered it to you, and you refused to pay him or the men who were fishing on the boat their shares until they spent about two weeks repairing nets?

Mr. Schwartz: Just a minute. If the court please, I don't see the materiality of that question. I take it that the previous question was preliminary to this one.

The Court: 1944-45?

Mr. Schwartz: Yes, sir.

Mr. Margolis: I think it goes to the question of control over the fishermen, your Honor.

Mr. Schwartz: The question, as I understand it, was as to whether he would pay these people for their share of the fish until they had fixed the nets. Am I correct?



(Testimony of George F. Naylor.)

Mr. Margolis: That is right. It goes to the question of control over the fishermen.

Mr. Schwartz: I submit that is not material to the issues in this case.

The Court: Objection sustained.

Mr. Margolis: If your Honor please, may I say this? He was asked a question about employer-employee relationship, and this goes to the question of control, which is one of the elements of whether or not there is an employer-employee relationship.

I call your attention, for example, to the Newsboys case, in which the elements of control were taken into consideration by the Supreme Court of the United States in determining whether or not there was an employer-employee relationship; and I think if counsel can go into a conclusion, we ought to go into the facts upon which that conclusion is based.

Mr. Schwartz: If the court please, I don't see where there is any question of control.

The Court: Let's assume that that was true, if the thing is immaterial it doesn't make any difference whether it is true or isn't true. I have sustained the objection on the ground it is immaterial.

\* \* \*

Mr. Margolis: I understand we have a right to make an offer of proof when an objection is sustained.

The Court: Out of the presence of the jury.

Mr. Margolis: I want to reserve that right.

(Testimony of George F. Naylor.)

The Court: You may reserve it.

Mr. Margolis: And prove what the answer would be. [1692]

The Court: It does not make any difference what the answer would be. It is immaterial.

Q. (By Mr. Margolis): Isn't it a fact that in 1944 and 1945 this group of fishermen I have referred to repaired nets for two weeks, and that thereafter they were paid and that the withholding tax was withheld on the basis of a three-week period or a period in excess of two weeks, including the period spent in repairing nets and the period in fishing?

Mr. Schwartz: Same objection, your Honor.

The Court: The same ruling.

Mr. Schwartz: May we have a direction of the court as to this line of questioning?

The Court: Yes, I think so. Counsel cannot do indirectly what he cannot do directly. I just stated if you have an offer of proof you must make it outside the presence of the jury. I have indicated that this is immaterial, and counsel should not persist in the line of questioning until the offer of proof is made and ruled on.

Q. (By Mr. Margolis): Isn't it a fact, Mr. Naylor, that with respect to the boats which you own you give directions to the fishermen as to what species of fish they should go fishing for and which ones you will accept?

A. I do not.

Q. You say that you have never done that?

(Testimony of George F. Naylor.)

A. Certainly I might tell them, might give them an [1693] order for some certain variety of fish. If they want to go and fish for that fish, that is entirely up to them. I never tell them: you have to go fish shark or barracuda, or anchovies or sardines. That is entirely up to their own discretion.

Q. Isn't it a fact when you give them the orders for those kinds of fish they go fishing for you and get the kind of fish you have ordered?

A. No, it isn't. That is not the case at all.

Q. They go fishing——

A. My fishermen come and get a boat, and they say, "I think I will put some barracuda gear aboard," or "I will fish for sardines," or "I think I will fish for shark, have you got any shark nets?" It is their suggestion what they will fish for. When the Reliance was fishing for bait for the sport fishing fleet, I said, "Casey, I can use 10 tons of sardines tomorrow," and then he could bring me those sardines if he wanted to, or he didn't have to.

Q. He did, didn't he?

A. He was glad to get the money, I think. He caught them when he could. But there is nothing compulsory about it at all. The fact of the matter is that those boats were fishing, and the principal part of their earnings was derived from another source than from the Bayside Fish Market.

Q. They were delivering some of their fish to the [1694] canneries and some of the fish to——

A. No, they were delivering some of their fish to another dealer that was salting fish; a direct



(Testimony of George F. Naylor.)

competitor of mine. They were delivering some fish to the sport fishing fleet for live bait, and they delivered some to me.

Q. Isn't it a fact that they offered you the fish first when they brought it in, however?

A. No, sir, that is not a fact.

Q. Isn't it a fact that you tell these fishermen—withdraw that. The *Reliance* wasn't a boat you owned, was it?

A. No; it is a boat that I operated.

Q. Isn't it a fact that on the boats which you own you tell the fishermen the type of gear which is to be used?

A. No, sir, that is not a fact.

Q. Isn't it a fact that on the boats which you own you tell the fishermen where the fish is to be delivered?

A. No, sir, that is not a fact, either.

Q. Isn't it a fact that on the boats that you own you tell the fishermen what fish they must fish for and what prices you will pay, and they must deliver to you?

A. No, that is not a fact.

Q. Isn't it a fact that on the boats that you own you tell the fishermen what size fish you will accept and what size you will not accept?

A. That is not a fact. Fish and game does that.

Q. Isn't it a fact that on the boats that you own that—

(Testimony of George F. Naylor.)

The Court: Just a minute. Did you wish to add to that?

The Witness: Yes. The Fish and Game tells them what size fish they can bring in and what varieties they can bring in.

Q. (By Mr. Margolis): I mean within the limits allowed by law there are various sizes of fish, are there not?

A. Yes. We never tell the fishermen what size to bring in.

Q. All right. Isn't it a fact that on the boats that you own you tell the skipper what fishermen should be employed on the boat?

A. We do not?

Q. Isn't it a fact that when you make arrangements for the use of your boats you have an understanding that certain individuals will not be taken to work or be given work on any of your boats?

A. No, sir, that is not a fact. [1696]

\* \* \*

Q. (By Mr. Margolis): You have been shown Government's Exhibit 37, for identification; is that the original letter which you received?

A. I think it is.

Q.: You turned that over to the government, is that right? A. That's right. [1697]

Q. And when you turned in over to the government you turned over at the same time any enclosures that went with it, did you not?

(Testimony of George F. Naylor.)

A. I probably did. I don't remember whether there was any enclosures with it, or not. There probably was. [1698]

\* \* \*

The Court: Excuse me. I think there is another witness waiting around here with some records. Obviously we will not be able to dispose of him this afternoon. What is his name?

Mr. Schwartz: Tendick.

\* \* \*

The Court: Will you have him step in?

Mr. Tendick, quite obviously we will be unable to get to you this afternoon. You have those two folders here. I will mark them for identification and you can leave them this evening and counsel can go over them tonight and if you can return tomorrow afternoon at 2:00 o'clock—will you be prepared to cross-examine him further at that time? [1703]

Mr. Kenny: Yes, that will be satisfactory.

The Court: The dailies will be marked for identification next in order.

The Clerk: No. 39.

(The documents referred to were marked Government's Exhibit No. 39 for identification.)

The Court: The monthlies will be No. 40.

(The documents referred to were marked Government's Exhibit No. 40.)

(Testimony of George F. Naylor.)

The Court: They will be marked 39 and 40. They will be left here with the clerk. [1704]

\* \* \*

Q. Do you know Mr. Tendick of the Fish and Wild Life Service of the Department of the Interior, who was just in the court room?

A. I do.

Q. Do you supply him information for his statistical releases? A. I do.

Q. How do you supply that information, by furnishing it to his representative or by telephone?

A. They call me every morning and I give them [1705] information.

Q. Every morning?

A. With the exception of Saturdays and Sundays.

Q. What information do you give them, Mr. Naylor?

A. I give them the towns and the variety of fish that we receive, by varieties.

Q. Do you hold out any part of that information or do you tell him all the poundage and all the varieties?

A. All the poundage of all the varieties.

Q. And your information to the State of California, Department of Fish and Game, that goes in on the copies of the purchase orders, is that correct?

A. That is correct.

The Court: That is what they call the fish tickets?

(Testimony of George F. Naylor.)

The Witness: That is right.

Q. (By Mr. Garrett): Do you supply the information to the Department of Wild Life and Fisheries in any other way than what you have just described? A. No.

Q. Do you make any deductions or computations on the material that you give them whatever?

A. No. I think the only discrepancy at all is where we might receive  $4\frac{1}{2}$  pounds of fish or something like that. We give them the figures in round numbers; no half pounds or [1706] quarter pounds.

Q. Otherwise the figures they get are your total receipts, is that right? A. That is right.

Q. Now at the time you sent the contract, which is Government's Exhibit No. 3 in evidence, to Mr. Gray, you had not yet given the representatives of the union a definite answer, had you, as to what you were going to do? A. That is right.

Q. And you gave them that answer later after you heard from Mr. Grace, was that it?

A. I don't believe that I ever gave them an answer. I think before they got through with me they had the picket line out in front.

Q. Then it isn't true that you ever conveyed to them any information whatever?

A. I may have. I don't recall exactly but I remember we were negotiating back and forth and discussing these things and suddenly without any further discussion or anything we had the picket line in front of our place.

(Testimony of George F. Naylor.)

Q. As to your conveying to them any opinion of Mr. Gray's as to the possible illegality of the contract?

A. Oh, yes, I did give them that information.

Q. Would it be fair to say that your testimony now in that respect is that you are not certain, or are you certain? [1707]

A. I am certain that I gave them that information.

Q. Your uncertainty at the present time consists of not knowing whether you gave them that information before or after the strike started, is that correct?

A. That is correct; more or less correct.

Q. You have testified that with respect to certain portions at least of the agreement you were satisfied with them at the time the agreement was presented, is that a correct statement of your testimony?

A. I thought at the time that there were some things in the agreement that were acceptable but there were some things in the agreement that were not acceptable. As a whole they were unacceptable to me.

Q. Did you at any time offer or propose to execute the parts which were acceptable to you?

A. No.

Mr. Schwartz: I object to that, if the court please.

The Court: He has answered.



(Testimony of George F. Naylor.)

Mr. Schwartz: What was the answer?

The Reporter: "No."

Q. (By Mr. Garrett): I take it then that as far as you are concerned, you are at present uncertain as to whether you ever conveyed to any representatives of the union any criticism of the contract prior to the occurrence of the strike, is that right? [1708]

A. Would you please repeat your question?

Mr. Garrett: The reporter will read it.

(The question referred to was read by the reporter, as follows:

("Q. I take it then that as far as you are concerned, you are at present uncertain as to whether you ever conveyed to any representatives of the union any criticism of the contract prior to the occurrence of the strike, is that right?")

The Witness: I never conveyed any criticism of the contract. The only thing I said was that my attorney said that the contract was—that I shouldn't sign the contract.

Q. (By Mr. Garrett): Do you recall *who said* that to?

A. Oh, heavens, either Bob Phelps or Charlie McLauchlan. I think either one of those two.

Q. But you can't recall which?

A. No, I don't recall which. It was some bona fide representative of the union, however.

Q. Someone you assumed to be a bona fide representative?

(Testimony of George F. Naylor.)

A. Well, they presented their——

Q. You still can't recall——

Mr. Schwartz: What was that?

The Court: They presented their what?

The Witness: They presented themselves as bona fide representatives [1709] of the union. I assumed they were.

Q. (By Mr. Garrett): But you can't recall whether it was before or after the occurrence of the strike that that happened?

A. No, I don't.

Q. Were you operating any of these trucks then, I mean at the time just before the strike occurred?

A. Oh, yes.

Q. How many of them?

A. I think at that time we were only operating one truck regularly. [1710]

\* \* \*

Q. Do you recall, Mr. Naylor—and I will confess my recollection is not too accurate on the subject myself—but do you recall on direct examination giving certain estimates and percentages as to the proportion of your business that was in fresh fish, cannery fish, what kind of fish and another fish, and the proportion of sale to one market and sales to [1718] another? Do you recall giving some testimony along those lines? A. Yes. [1719]

Q. All right. I merely want to ask this general question: such statements as you gave them to us, were they intended to include the receipts of the

(Testimony of George F. Naylor.)

Los Angeles business, as well as the Newport Beach business, or only the Newport Beach business?

A. Only the Newport Beach business.

\* \* \*

Q. And those receipts for the Los Angeles business and those sales for the Los Angeles business, you haven't testified to that, is that correct?

A. I can't hear you.

Q. You haven't testified to any of the receipts by the Los Angeles business or its sales?

A. No. [1720]

Mr. Margolis: First of all, we have ascertained from Mr. Fuss that he made the request of a Mr. Boston at the American Railway Express.

The Court: Mr. Boston?

Mr. Margolis: That is the name; B-o-s-t-o-n.

The Court: Yes. That was mentioned in the testimony.

Mr. Garrett: That was the man who was on the stand.

Mr. Schwartz: That is right. He was on the stand.

Mr. Rubin: I would like to state that during the afternoon, on learning that information, in the presence of Mr. Fuss I called Mr. Boston and explained to him the purport of your Honor's ruling, as I understood it, and I understand that there will be no problem with respect to Mr. Fuss or Mr. Law obtaining access to these records. Mr. Boston was under the impression that there is a Federal law preventing the disclosure to anyone except a ship-

(Testimony of George F. Naylor.)

per and consignee, and that is probably true, and I told him that Mr. Ripley was subject to the Court's order and he agreed to cooperate in that respect. I think he simply wanted to protect his own organization. There is no problem now. We have handled it informally, if that is satisfactory to counsel.

The Court: Is that satisfactory?

Mr. Margolis: That is satisfactory. However, I believe that your Honor's order as to us terminated as of today. I assume it will be extended?

The Court: It will be extended until Thursday at 10:00 o'clock.

Mr. Margolis: That is satisfactory.

\* \* \*

Mr. Garrett: Just one other thing. Mr. Rubin has stated that he stated the conditions to Mr. Boston under which apparently his interpretation of the Court's order was based, [1744] that we might be permitted access to the records of the Railway Express. I should like to know on the record at this time what, if any, restrictions were placed on our examination of the books by the instructions given by the Government to Mr. Boston.

The Court: I instructed whoever was here that day that those particular records, those slips, whatever they were, would be made available.

Mr. Rubin: I didn't give Mr. Boston any instructions, your Honor.

The Court: Whoever was here, he knows what they want.

(Testimony of George F. Naylor.)

Mr. Margolis: If there are any problems, we can break them up.

The Court: I do not think there will be any difficulty.

Mr. Margolis: I want to say, your Honor, that the other two places where Mr. Fuss was admitted entrance, he had no problems. The only problem that occurred as far as Mr. Fuss was concerned was at the American Railway Express.

I do have another matter to take up in connection with that before making an offer of proof, your Honor. For the period involved, Mr. Fuss has made some summaries from those records to supplement the information which was obtained by the Government. Now we are in this position: We couldn't ask the company to make the summaries for us, as the Government was able to do, and therefore we had to make them ourselves, [1745] and probably the only actually proper way of getting them in may be to subpoena those records from which a summary was made, which is something we don't want to do.

The Court: There is a solution to all of these problems in the new rules. The Court can appoint an expert to be the Court's witness to go down and examine the records and ascertain from those records the particular data that is desired and draw the conclusions and opinions from it that any other accountant or economist or accountant could, because I take it what you are interested in is the flow

(Testimony of George F. Naylor.)

of fish, that is to say, when I say the flow of fish I mean in the whole sense, the amount, quantity, price.

Mr. Margolis: That is right. We have it in terms of pounds, as far as these exhibits are concerned.

I might show these to the Government and it might be that they could be submitted on our testimony of what was done, subject to the right of the Government to check these figures as to their accuracy.

The Court: You can discuss that with the Government without me being present.

Mr. Schwartz: I don't get the point that Mr. Margolis is trying to get at.

The Court: You can explore it some other time than this moment.

Mr. Margolis: We don't want to give up our right to recall [1746] the witness in the event that we can't agree on some way of getting this in.

The Court: If there is any further difficulty in connection with the matter, and I deem the matter material, I have resort to the new rules here and can appoint somebody. [1747]

\* \* \*

The Court: Call the jury. Just a moment. You had an offer of proof, I think, yesterday, Mr. Margolis.

Mr. Margolis: Yes.

If your Honor please, this offer of proof is made with respect to the testimony of the witness Naylor.



(Testimony of George F. Naylor.)

lor. I offer to prove that if the witness had been allowed to answer appropriate questions along the lines indicated, to which objections were sustained, and other questions along the same line, that he would have testified as follows:

That some time in late 1944 or in 1945 he owned and operated a boat known as the Tropic Bird; that that boat went out on a trip with a skipper by the name of Andy Brockett, came back with a load of fish and with some damage to the net as a result of the fishing operations; that all of the fish caught on that trip were delivered to him, and that the skipper and the men then requested payment immediately upon delivery of the fish for the fish which had been delivered; that Mr. Naylor advised them that he would not make any payments for the fish until the nets were repaired; that the men in the crew then went to work—I am referring to the men in the crew on the Tropic Bird—they went to work on [1751] Mr. Naylor's premises repairing the nets, and spent approximately two weeks in repairing those nets, full time; that at the end of that period the men were paid for the fish which had been delivered about two weeks before, and that withholding tax was withheld from the payments on the basis that it represented payments for work of a period of approximately two and a half weeks, the fishing trip being one-half week and the period of repairing nets being about two weeks.

That completes my offer of proof.

The Court: Very well.

Mr. Margolis: I want to add one more thing to the offer of proof. I want to add that if further appropriate questions were allowed to be asked, that the witness would have testified that this procedure was not an unusual procedure, and that he frequently required fishermen to follow the same procedure. [1752]

The Court: The objection to the question yesterday was sustained on the ground it was immaterial. That will be the ruling of the Court today.

\* \* \*

(The following proceedings were had in the presence of the jury:)

\* \* \*

### FRANK AGLIANO

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

\* \* \*

### Direct Examination

By Mr. Rubin:

Q. Mr. Agliano, what is your business or occupation? A. Cigar making.

Q. Prior to your being a cigar maker, what were you engaged in doing? A. Cigar making.

Q. During 1946 did you ever have any occupation other than that of cigar maker? A. Yes.

Q. What was that occupation? [1765]

A. Employed by the union on a temporary basis.

Q. What union?

Mr. Garrett: May I have that answer read?

(Testimony of Frank Agliano.)

The Court: He said he was employed by the union on a temporary basis.

Q. (By Mr. Rubin): What union?

A. The San Diego branch of the International Fishermen's Union.

Q. Of what local? A. No. 36.

Q. When did you enter upon your employment with that union, approximately?

A. I don't remember whether it was the middle of June, the end of June or the early part of July. I don't quite recall very well.

Q. Do you recall having served upon your a subpoena duces tecum? A. Yes.

Q. That is a paper by the United States requesting that you produce certain documents?

A. That is right. [1766]

\* \* \*

Q. What was your capacity there in Local 36 temporarily?

A. Just take charge of the office and whatever there was to transact during that period, tending to members' requests or collecting dues—anything normally carried on in the office.

Q. Were you the only employee there?

\* \* \*

The Witness: I don't recall. [1767]

The Court: Was there somebody else working there besides you?

The Witness: For the local?

The Court: Yes.

(Testimony of Frank Agliano.)

The Witness: For that particular branch?

The Court: Yes.

The Witness: No.

Q. (By Mr. Rubin): Did you produce certain documents pursuant to the subpoena that was served upon you? A. Yes.

\* \* \*

Q. Where did you get these records that you produced?

A. In the office, the union office.

Q. Were they the records of the union office?

\* \* \*

The Witness: Yes, what was there available.

\* \* \*

Q. (By Mr. Rubin): Calling your attention to Government's Exhibit 508 for identification I will ask you if that is one of the documents that you produced pursuant to the subpoena duces tecum.

A. I guess so. There is my initials on it.

\* \* \*

The Court: When you say you guess so, do you mean yes or no or do you mean that is your best recollection?

The Witness: That is to the best of my recollection, because I didn't go through each of these letters when I was asked to bring them over.

The Court: All right.

Mr. Garrett: Are those initials in your handwriting, Mr. Agliano?

The Witness: Yes.

(Testimony of Frank Agliano.)

The Court: The initials on the back?

The Witness: Yes. [1770]

\* \* \*

Q. Mr. Agliano, you stated that you produced the documents that were available, is that correct?

A. That is right.

Q. Now where did you bring those documents?

A. I brought them to the Federal grand jury room. [1771]

\* \* \*

Q. (By Mr. Rubin): Before you brought them into that room, did you put any marks on the back of them? A. I don't recall.

Q. Now using this document to refresh your recollection and calling your attention to the initials in the upper right-hand corner——

The Court: Which one is that?

Mr. Rubin: No. 508.

\* \* \*

Q. Does that refresh your recollection as to whether or not you put your initials on those documents?

A. Yes. I recognize the initials but I don't recall where it was placed. You are asking where, what room or which place I was putting them on.

Q. Do you know what building it was?

A. I think it was here, wasn't it, in your office?

Q. All right. We will let the answer stand as it is. [1772]

\* \* \*

(Testimony of Frank Agliano.)

Q. (By Mr. Rubin): Now calling your attention to Government's Exhibit 503 for identification, I ask you the same question.

\* \* \*

Q. I show you Government's Exhibit No. 503 and calling your attention to the reverse side thereof I will ask you if that also is one of the records which you produced. [1773]

\* \* \*

A. Yes, the initials are there.

The Court: You say the initials are there. Did you produce that document?

The Witness: Well, your Honor, I didn't read each and every one of these before I brought them in so that I could tell.

The Court: Your initials are on the back of that document?

The Witness: Yes.

The Court: Does that signify to you that that is a document that you produced?

The Witness: That passed through my hands.

The Court: That is a document that you produced?

The Witness: That went through my hands; yes.

The Court: What do you mean, it went through your hands?

The Witness: I must have had them in order to sign them.

What I mean, your Honor, is this, I didn't read all these documents.



(Testimony of Frank Agliano.)

The Court: Counsel isn't asking you about that now. All he wants to know is whether or not that is the document you brought up to his office in response to that subpoena duces tecum.

The Witness: The initial is there; yes. [1774]

Q. (By Mr. Rubin): Does that indicate that that is the document that you produced?

\* \* \*

A. I guess so. All these that I brought I was asked to put the initials on.

Mr. Rubin: All right.

Q. Now would the same answer be true with respect to No. 504 for identification? [1775]

\* \* \*

A. It looks like my handwriting.

\* \* \*

Q. (By Mr. Rubin): I call your attention to Government's Exhibit 505. Look at the front side and then look at the back side, and then tell me whether or not—tell the court and jury whether or not that is one of the documents you produced at that time.

\* \* \*

A. Yes. [1781]

\* \* \*

Q. (By Mr. Rubin): Calling your attention to Government's Exhibit No. 45, for identification, which consists of a series of cards, most of which are white, a few of which are salmon colored, bearing on their face "Application Form International Fishermen & Allied Workers of America, Local

(Testimony of Frank Agliano.)

#36," and ask you if you produced those cards pursuant to the subpoena duces tecum.

Mr. Andersen: What is the identification on them?

Mr. Rubin: No. 45.

A. Yes. [1782]

\* \* \*

Q. (By Mr. Rubin): I call your attention to—well, let's take the card referring to Mike Romero, Jr., headed "Registration Blank Local No. 36, Newport Beach, California." First line: Applied at San Diego, California,—and I call your attention to the lower right-hand corner of that card, wherein it says, "Book Number," and then there is a number written in. Now, tell us, Mr. Agliano, what that number represents. [1783]

\* \* \*

A. That number is the book number issued to the applicants.

\* \* \*

Q. (By Mr. Rubin): During the time you acted in the capacity which you testified to in San Diego, was there ever a book number given to any person who was not a member of the organization?

\* \* \*

A. The practice that I followed there was to issue numbered books to the applicants. The union books are numbered, and whenever an applicant applies and pays whatever the dues happen to be he is given or issued a book, which is numbered.

(Testimony of Frank Agliano.)

Q. (By Mr. Rubin): Was a book ever given to someone during the time you were acting in the capacity you testified to, who wasn't a member?

\* \* \*

A. I don't recall of issuing a book unless an applicant fills out the application and pays his dues.

\* \* \*

Q. (By Mr. Rubin): Let me ask you this: when an applicant pays his dues, do you give him any document in exchange for what he pays you?

\* \* \*

A. We issued receipts any time a payment is made.

Q. (By Mr. Rubin): When the initialed receipt is given is any notation placed upon this card?

\* \* \*

The Witness: Well, I don't recall that I followed it. It was my procedure of marking those cards whenever they made any payments at the time that I was there.

Q. (By Mr. Rubin): What number did you put on those cards when you marked it?

A. The receipt number and the book number, the membership book number.

Q. Mr. Agliano, who was the president, if you know, of the San Diego unit of Local 36 during the time you performed the function to which you have testified?

\* \* \*

A. I believe Pete Carrao. [1789]

\* \* \*

(Testimony of Frank Agliano.)

Mr. Rubin: At this time, your Honor please, we offer Government's Exhibit No. 503 for identification into evidence.

Mr. Garrett: Objected to on the ground that it is incompetent, irrelevant and immaterial, and there is no proper foundation laid.

The Court: Go ahead with the rest of your offers. [1802]

Mr. Rubin: At this time, if your Honor please, we offer Government's Exhibit 508 for identification into evidence.

Mr. Garrett: Same objection; incompetent, irrelevant and immaterial, and particularly no proper foundation laid in the case of No. 508 for identification. Also hearsay.

Mr. Andersen: We join in the same objection.

The Court: I understand that all the objections that Mr. Garrett has been making have been made on behalf of all the other defendants.

Mr. Andersen: There is no showing, may it please the Court, that the original of any such letter was mailed. What we have here purports to be a copy.

Mr. Rubin: Under Section 695 of Title 28, if your Honor please, the foundation has been shown.

The Court: State all of your offers. You have one more or two more?

Mr. Rubin: No. 505 we offer into evidence at this time.

The Court: And No. 45?

(Testimony of Frank Agliano.)

Mr. Rubin: And the cards; yes. [1803]

The Court: All right.

Mr. Rubin, do you wish that marked for identification?

Mr. Rubin: Your Honor please, we will offer it directly into evidence as Government's Exhibit next in order.

The Clerk: No. 41.

(The document referred to was marked Government's Exhibit No. 41 for identification.)

\* \* \*

The Court: You have offered now, Mr. Rubin, 505—what numbers? 503, 505, and——

Mr. Andersen: Are they going in under those numbers?

The Court: Yes. 503, 505 and 508. You are not offering 504?

Mr. Rubin: Not at this time.

The Court: Which one is 504? Let me see it.

(The document was passed to the court.)

The Court: Very well.

Mr. Rubin: And the cards, if your Honor please.

The Court: 45?

Mr. Rubin: 45.

The Court: And 41?

The Clerk: Is that in evidence?

The Court: It has been offered.

Mr. Andersen: Exhibit 41, what is it?

The Court: The subpoena duces tecum.

These numbers will be used, because they indicate by the serial 500, San Diego.

Will this conclude your direct examination of this witness?

Mr. Rubin: Yes, your Honor.

Mr. Garrett: Take these proffered documents in order, which are proffered for entry into evidence, if your Honor please, the first is 503——

The Court: The first is 41, the subpoena duces tecum.

Mr. Garrett: Yes, No objection to that.

The Court: All right. It is admitted in evidence.

(The document referred to was received in evidence and marked Government's Exhibit 41.)

\* \* \*

Mr. Rubin: At this time, if your Honor please, I think the stipulation should probably be read to the jury. Would your Honor read the stipulation to the jury?

The Court: Yes, I have read the stipulation. I think that it may be read to the jury, and I understand you want to offer some objections too—you are going to offer in evidence all of these documents?

Mr. Rubin: If your Honor please, there are certain documents concerning which parts of which we will offer in evidence and other documents which we will offer in toto. These documents that I am about to offer——

The Court: What I am getting at is—and we are proceeding after 12:00 o'clock today because I



understood this situation was going to arise—that you desired some time to argue your objections.

Mr. Kenny: Your Honor, one objection, obviously: if a part of a document is offered we want the whole document in. Your Honor has ruled with us on that. If counsel is going to [1810] reopen that, we want time.

The Court: Let's argue that when we can have a lot of argument this afternoon.

Read this stipulation now and make your offer. Here is the original.

Mr. Rubin: I might state, if your Honor please——

The Court: I think you could probably omit the numbers in reading your stipulation. Refer to them as various numbers which will be called to the jury's attention at the appropriate time.

Mr. Rubin: Yes, your Honor, that might save time.

This is captioned: "In the District Court of the United States, for the Southern District of California, Central Division.

"United States versus"—and then all of the defendants are named. "Criminal No. 18842.

### "Stipulation

"It is hereby stipulated by and between the United States of America, hereinafter referred to as the Government, and such defendants as are represented of record by the attorneys who have executed this Stipulation, as follows:

"1. That all documents hereinafter referred to

in this Stipulation, shall be deemed authentic and no foundation testimony or common law or statutory proof of their authenticity shall be required of either the Government or the defendants and any proof of authentication is hereby waived; that such documents are what they purport to be on their face; that wherever a written signature appears on any of said documents, such signatures shall be deemed to have been signed by the person whose signature it purports to be.

“2. It is further stipulated that no objection will be made by either the Government or the defendants who are party to this Stipulation on the grounds of lack of foundation or insufficient identification of each document as being what it purports to be; all other objections are reserved.

“3. Without limiting the generality of the foregoing language, the above Stipulation shall apply to the following Government Exhibits for identification:”

Followed by a series of numbers which have been marked for identification in this case.

“4. In addition to the foregoing general stipulation it is further stipulated as follows:

“(a) That Government’s Exhibit 206 for identification are minutes of a ‘Strike Committee Meeting’ of defendant Local 36, San [1812] Pedro Unit, dated May 27, 1946.

“(b) That Government’s Exhibits Nos. 310, 311, 312, 313, 314, 316, 317, 318, 319 and 328

for identification are minutes of 'Strike Committee Meeting' of Newport Unit of Local 36.

"(c) That the same person who prepared Government's Exhibits 305 and 321 for identification also prepared Government's Exhibits Nos. 301, 302, 303, 304, 307 and 308 for identification.

"(d) That Government's Exhibit No. 401 for identification is the minutes of general meeting of the Redondo Unit of defendant Local 36, dated May 27, 1946.

"(e) That Government's Exhibit No. 402 for identification is the minutes of the Santa Monica Unit of defendant Local 36 dated March 24, 1946."

And the stipulation is signed and entered into by Katz, Gallagher & Margolis, Gladstein, Andersen, Resner, Sawyer & Edises and Robert W. Kenny, by Ben Margolis, attorneys for all of the defendants except Floyd Sherman, and by William C. Dixon on behalf of the United States of America.

The Court: And bears my approval.

Mr. Rubin: And bears the Court's approval.

The Court: Do you offer the documents in evidence?

Mr. Rubin: If your Honor please, that is the foundation [1813] testimony. The documents themselves, I can offer this particular portion in evidence and specify the numbers. Various of the other documents will be offered only in part; we do not offer the entire document; and in accordance with your

Honor's thoughts in the matter, perhaps we can take up those documents seriatim out of the presence of the jury and argue them at that time. These we can offer now.

The Court: In connection with offering these documents in evidence, you will not have any further testimony in connection with your offer?

Mr. Rubin: In connection with the foundation testimony, that is correct, your Honor. [1814]

\* \* \*

(The following proceedings were had outside the presence of the jury.)

\* \* \*

Mr. Rubin: We will offer the subpoena duces tecum returnable on the 24th of July 1946 to Local 36, San Diego Unit, as part of Government's Exhibit 41.

Mr. Andersen: Of course those were grand jury subpoenas, weren't they?

Mr. Rubin: That is right.

The Court: Admitted. [1820]

(The documents referred to were received in evidence and marked Government's Exhibit No. 41.)

Mr. Andersen: What number will that be?

The Court: They will both be 41.

\* \* \*

Mr. Margolis: In connection with the testimony of Mr. Naylor, your Honor, although I have made previous motions to strike I would like to refer to specific portions of the transcript and ask your Honor to read them.

The Court: What page?

Mr. Margolis: Page 1600, if your Honor please. I want at this time to move to strike in its entirety and separately each and every sentence and word beginning at page 1600, line 8, to and including 1601, line 22.

After your Honor has had an opportunity to read it, I would like to make a very brief statement.

The Court: I have read it. [1821]

Mr. Margolis: Now, if your Honor please, in his testimony at line 11 Mr. Naylor said: "They explained to me that the dealers in San Pedro had been presented with an agreement, I believe it was, or the dealers had written a letter to the union stipulating certain things."

Now that, it is our contention on the motion, and I will make an offer to prove, refers to the letter which was attached to or inclosed with Government's Exhibit 37, and here he is testifying concerning a conversation about the contents of a letter which the Government has not produced, although they had it in their possession, and which we requested that they produce. Then we will make an offer of proof to show that the letter is quite different.

The Court: He is testifying here as to what they said.

Mr. Margolis: Yes, your Honor.

The Court: The letter might have said anything, but this is his conversation. This is what he says their conversation was with him: "They explained to me that the dealers in San Pedro had been presented with an agreement, I believe it was, or the dealers had written a letter to the union stipulating



certain things that they—I believe that the union would have a representative.” Now they said that a letter had been written. That is what he is testifying here.

Mr. Margolis: Yes, but we would have been able to show that when he said they said, they at the same time handed him [1822] the letter that was inclosed here.

The Court: You can still show that. [1823]

Mr. Margolis: Well, the government has the letter, and they refused to produce it.

The Court: They are not relying on the letter; they are relying on the conversation. At least, that is all there is in the record to rely on.

Mr. Margolis: Well, if your Honor please, I submit that they were talking with regard to Exhibit 37. I would like to make as part of my motion to strike,—I would like to make an offer of proof. Maybe I haven't made myself clear. The point is if we had the letter to cross-examine—they are examining him directly with regard to a conversation in connection with a particular document. If we had the entire document with which to cross-examine him we could have shown that the conversation was different. And here we are bound by a conversation which goes around and is in connection with a certain letter, and we are effectively deprived of the right to cross-examine this witness with regard to the true contents of the letter. And we will offer to prove that in the event that letter were produced and we were given an opportunity to continue our cross-examination upon the basis of the production of



the letter—by that I mean the enclosure concerning which there has been so much discussion—that the witness would have changed his testimony and would have said that the conversation concerned solely an arrangement to fix prices on a trip by trip basis, so that when a fisherman went [1824] out fishing he would know in advance of the trip how much he was going to get for his fish. And, further, that this was precisely the practice which he has been following in the past.

We are deprived of our opportunity to cross-examine him without that letter to do that.

The Court: I don't think so. The motion to strike is denied. The offer of proof is rejected.

\* \* \*

Mr. Rubin: At this time we offer into evidence Government's Exhibit No. 238, for identification.

Mr. Andersen: What is it?

The Court: Minutes of joint executive board meeting, Southern California Fishermen—do you have your list there? [1828]

Mr. Andersen: We have a list, and we also allegedly have a complete copy, photostatic copies of all of them, but 238 we don't have. There are about eight or ten documents that we just don't have.

The Court: 238 was the one that was offered by some other witness——

Mr. Rubin: Yes.

The Court: That you asked Miss Evanisevich about. Suppose you just make your offer for the whole list, then you can check them off. You have your lists, haven't you?

Mr. Margolis: Yes, but——

The Court: He is going to offer that in toto. He is going to make his offer of all of the exhibits that he offers in toto.

Mr. Andersen: I don't believe that will work out, Judge.

The Court: Then you can object to them in toto.

Mr. Andersen: We will just have to object to them all.

Mr. Margolis: We will have to object to each individual one, your Honor.

The Court: I know. But if he makes his offer now, then you can come up and say: I object to No. 238 because, because, because.

Mr. Andersen: I don't believe they are going to offer all of them, your Honor.

The Court: I know he is not going to offer all of them, [1829] but he says he is going to offer now those on the list which he expects to offer in toto.

Let's try it this way and see how we get along.

Mr. Kenny: I think we can get along.

The Court: Then if he does, he can hand them up to me, and when you make your argument I will have it up in front of me. As it is now we will be passing documents back and forth all afternoon.

Mr. Rubin: I might state, further, because of the stipulation we have had to endeavor to reorganize our documents during the noon hour. We have gotten almost finished, and my accountant and my associate colleague is endeavoring to do the best he can to finish them in this period.

I now offer in toto the following documents heretofore marked for identification into evidence as the Government's Exhibits next in order respectively:—

The Court: They will take the same number that you have in the stipulation.

Mr. Rubin: Yes, your Honor. No. 207.

The Court: Have you got a list of them there?

Mr. Kenny: All right.

Mr. Rubin: No. 211; No. 212; No. 213; No. 214;—

Mr. Kenny: Can you go just a little slower?  
Mr. Margolis is pulling our duplicates.

Mr. Rubin: 215. [1830]

The Court: 215.

Mr. Rubin: 216; 217; 219; 220; 225; 227.

The Court: Just a moment.

Mr. Margolis: Where is 227, Mr. Rubin?

Mr. Kenny: Minutes of strike committee meeting.

Mr. Rubin: Of June 15, 1946.

The Court: 227. That is the first one on the list.

Mr. Rubin: 237, 236, 206, 203, 231.

Now on the 400 series, 401, 402.

Mr. Kenny: That is one we haven't a copy of.

Mr. Rubin: 403, 405, 404, 406.

The Court: You are going to offer all of 406-A?

Mr. Rubin: Yes, your Honor.

The Clerk: That is 406 and 406-A, both?

Mr. Rubin: Both, that is correct.

I might state that 406-A is not on the original list that was typed. It was attached to 406 and discovered later. I was telling counsel about it.

The Court: All right.

Mr. Rubin: 411.

Mr. Kenny: 411 is another one that we have no copy of.

Mr. Rubin: 332, 333, 334.

Mr. Kenny: 333 we have no copy of. Maybe we can find a copy.

Mr. Margolis: We don't have 333 or 334. It isn't in this bunch.

Mr. Rubin: Those are the documents, if your Honor [1832] please, that are offered in toto with the exception of the Newport unit documents, and at this point we haven't found any that we desire to offer in toto.

The Court: With the exception of the Newport unit?

Mr. Rubin: That is right.

The Court: What numbers are they, 500?

Mr. Rubin: No. Those are No. 300, your Honor. The 500 are the San Diego unit.

The Court: You mean you are not ready to complete your offer in toto?

Mr. Rubin: That is correct. I doubt very much if there will be any more in toto offered from the Newport minutes.

Mr. Kenny: Just so we will keep abreast of each other, you are offering 333?

The Court: 332, 333 and 334.

Mr. Kenny: As to 333 we have no copy and 334 no copy.

Mr. Andersen: When I was upstairs with you you told me you didn't want those.

Mr. Rubin: No.

Mr. Kenny: It doesn't make any difference. We will get a copy.

I think perhaps we should get it clear. What was it about the Newport unit, was that in relation to 333 or 334?

Mr. Rubin: No, I am referring now to the Newport minutes. The probabilities are that there will be no Newport [1833] minutes that will be offered in toto.

The Court: The Newport documents are Serial No. 300?

Mr. Rubin: That is correct.

The Court: And Mr. Dixon is checking them now?

Mr. Dixon: That is right.

The Court: To see whether or not you want to offer them in toto?

Mr. Dixon: That is correct.

The Court: With your offer of 333 and 334 does that complete your offer of documents in toto?

Mr. Rubin: As to this particular series. We are going to offer all of the cards in toto also.

The Court: Are they numbered?

Mr. Rubin: Yes, your Honor.

The Court: Let us make the offer now. Are they on this list?

Mr. Rubin: Yes, your Honor. No. 42, 43 and 44.

The Court: You have offered 45 in toto and 503, 505 and 508.

Mr. Rubin: 505 has been withdrawn, I believe.

Mr. Andersen: 505 was withdrawn, your Honor.

The Court: 503 and 508?

Mr. Rubin: That is correct.

The Court: Now you will have further foundation on 504 and 505? [1834]

Mr. Rubin: 503 and 508, if your Honor please, we submit has sufficient foundation.

Mr. Kenny: Those are the only two of the 500 series you are offering in toto, is that correct?

Mr. Rubin: I think that is correct. Just a moment until I check.

Strike 502 out. That is No. 28, which we used before.

The Court: It is in?

Mr. Rubin: It is in for identification only.

Mr. Andersen: You mean 28 and 502 are the same?

Mr. Rubin: That is right. So we will take 502 out.

Those are all the documents, if your Honor please.

The Court: Have you finished, Mr. Dixon, on your Newport?

Mr. Dixon: Not yet, your Honor. There is a possibility that there may be two or three. I haven't run across any yet.

The Court: All right.

Now on the other documents, you are going to offer portions of them?

Mr. Rubin: Yes, your Honor.

\* \* \*

The Court: And I think we could probably save a great deal of time if you sit down with the documents and mark out the portions you want to offer



so we can make a sequential statement without interruption and then you can start in and make your argument.

Mr. Rubin: We might use a red and green pencil. We have hesitated mutilating these documents prior to this time.

Mr. Margolis: We have no objection to that.

The Court: Anything that will expedite the proceedings and will not mutilate the documents.

\* \* \*

Mr. Rubin: I have a few more documents, if your Honor please, to be offered in toto.

I would like to read their identification numbers at this time. Document No. 27.

Mr. Margolis: Does that have a number?

Mr. Rubin: That is one of the sequence numbers.

Mr. Margolis: Do we have a photostatic copy of that?

The Court: It isn't in the stipulation.

Mr. Margolis: It isn't included in our stipulation, is it?

Mr. Rubin: No. The foundation to that was laid by Miss Evanisevich.

The Court: 27 was passed around a long time ago.

Mr. Rubin: And No. 28, also.

The Court: 27, 28, 218 and 252 by Miss Evanisevich.

Mr. Rubin: We also offer 208 and 218.

The Court: Wait a minute.

Mr. Rubin: These are in toto on the stipulation.

The Court: 208—

Mr. Kenny: I would suggest that it might be better, Mr. Rubin, if you offer the ones that are included within the stipulation first, and then we will have that all checked off, and then you can back up to 27 and the others.

The Court: 218 in is the stipulation. Is 208? Yes, at the bottom of the central stack of figures. And 218 is [1837] the third down from the top on the right-hand stack of figures.

Mr. Rubin: 311 and 312.

The Court: Wait a minute. I can't find 312 either. It is not on the stipulation. That was marked, for identification.

That is on page 4 of the stipulation, subparagraph (b). That is 310, 311, 312.

Mr. Rubin: 314, 317.

The Court: 314, 317.

Mr. Rubin: And 328.

The Court: And 328.

Mr. Margolis: These are offered in their entirety?

Mr. Rubin: Yes.

Mr. Kenny: Do you want to introduce 27 now, or later?

Mr. Rubin: That is up to the court. I thought the court wanted us to offer all the documents in their entirety. If it would be more convenient to the court for the purpose of this proceeding to withhold the offer of 27 and 28 until after the stipulated documents have been considered, I of course will do that.

The Court: Let's see 27 and 28. They are not in the stipulation?

Mr. Rubin: No, your Honor.

Mr. Kenny: They are not covered by the stipulation. We may be able to work them out, but I am just trying for clarity— [1838]

If we were on the stipulated matters we could make the record a little more clear.

The Court: Yes. All right. We will hold 27 and 28. Now, what about your partial offer? [1839]

Mr. Rubin: With respect to the 200 series, if your Honor, please, these documents are offered——

The Court: All the remainder of the 200 series indicated in the stipulation?

Mr. Rubin: No. I am going to refer now specifically to those documents in the 200 series which at this time we desire to offer in evidence only partially.

The Court: And which are all of the other documents listed in the stipulation not offered in toto?

Mr. Andersen: Not necessarily.

Mr. Rubin: Not necessarily.

The Court: All right.

Mr. Rubin: Does your Honor desire at this time that we point out the specific items?

The Court: Let me see it.

Mr. Andersen: I think it would be better to make the partial offer first and then take them afterwards.

Mr. Rubin: That is all right with me.

(The document referred to was passed to the Court.)

The Court: All right. Make your offer in that fashion.

Mr. Rubin: Very well.

We offer documents Nos. 201, 205, 204, 202, 224, 226, 228, 230 and 233.

Now as to the documents just enumerated, if the Court please, we desire to offer, as part of the Government's case, [1840] only such portions as has been indicated thereon with a red check on the left side margin.

The Court: The first document that you showed me, you had a check on the left side of several names.

Mr. Rubin: That is correct.

The Court: Now what you mean is that you are offering those documents as against those named persons only, or as against all the defendants?

Mr. Rubin: As against all the defendants. We are offering the document as to all defendants in accordance with the first ruling of the Court at the outset of the case.

The Court: Yes, but as to the name.

Mr. Rubin: Specifically with respect to this document, it may be deemed that we are interested only in those names which have been marked with a red check.

The Court: In other words, you are offering that document to show that those persons——

Mr. Rubin: Were present.

The Court: ——whose names are checked with red check to the left of the names were present?

Mr. Rubin: That is correct.

The Court: And that those things which are indicated in the paragraphs with the red check at the left were done or said?

Mr. Rubin: That is correct, that they are part of the [1841] minutes, and under the rules we believe——

The Court: As to each one of these in the 200 series?

Mr. Rubin: That is correct.

The Court: And counsel for the defense, do you have your red checks?

Mr. Kenny: No, your Honor, I think perhaps we can come to grips with the central question now.

The Court: You mean you are not advised what those checks are?

Mr. Kenny: Oh, yes. We have seen them. There is no way to make a record of them now, and I thought since your Honor has already ruled, as we gather it, that the whole document must be in and not a portion——

Mr. Rubin: Just a minute. That is an assumption.

Mr. Kenny: I said we assumed that to be the case. But before we get into requiring counsel to make a record, because a reviewing court never would know what a red checked document was——

The Court: Well, the original document will be there, and it is our custom now to send up the original exhibits.

Mr. Kenny: It would have to be marked with much greater particularity than it is now. The reason we have no marks on them is, of course, that

we are urging that if any part of the document goes in the whole document, the whole transaction must come before the court, so I thought we could argue at this time that central question. Then if your Honor should be disposed to rule in favor of the government, then we should work out a means of making the record definite and certain as to what is to be omitted; and then also should your Honor rule in favor of the government, there will be certain portions that we will then argue should be omitted. But we thought that Pandora box of making definite and particular, and what our own requested omission would be, might never be opened at all if your Honor adopted the ruling which we conceive to be clearly the law, and that a document introduced for any purpose is admissible for all purposes.

Mr. Rubin: Is this an argument or an objection?

Mr. Kenny: I am trying to clarify the thing to show where we are in the matter.

The Court: I think I get your point. I think that I would rather have you make your whole offer. Now, for the purposes of the records here, and among us, we are able to determine what is meant when we say checked in red, because [1843] that is checked on the original exhibit, and you have been advised.

Mr. Rubin: Of the 200 series.

The Court: Yes, of the 200 series. Is there some other identifying characteristics on the other series?



Mr. Rubin: Mr. Dixon will make the offer on the other series, and that will be our complete offer.

The Court: Will they have the same identifying characteristics?

Mr. Rubin: These are typed, if your Honor please, and these are susceptible of this particular type of identification. The others are handwritten, and in order to clarify it Mr. Dixon will make the other parts in the 300 series.

The Court: Here is what I thought: in the event I overrule your objections and admit documents only partially, then they are admitted and counsel can read the portion into the record that is admitted. If the whole document goes in, then it won't be necessary to read it all in the record, it can be saved for such time as it goes to the jury. Or in the event a portion is admitted by the government—in the event I hold that—and that you are entitled to move the admission of the rest of it, which I deem to be the law, that they can admit part of it providing I have the whole document here in front of me to see everything that is there, that I can overrule your objection and let them admit a part of it, [1844] and then if you wish to put the rest of it in, in that event when the time comes, if it comes, then you can read that portion to the jury.

Mr. Garrett: May I interject a moment here, your Honor? Am I mistaken in believing that where a party offers a document and proposes that only a part thereof be received in evidence, that the

burden is upon him of showing the court reasonably, something I haven't heard here so far, a reason why a portion rather than the whole of the document is only moved for admission? I have heard no statement.

The Court: Obviously when you offer a document you offer that portion which is material or which he deems to be material to his side of the case. Then if I have the whole document before me I can determine whether or not that is or isn't.

Let's see if we can get on with our offer. In other words, I would like to get the record of the offer made now, because once we get to arguing the matter here we are going to jump from minute to minute and letter to letter, and the record is liable to become very confused.

Mr. Kenny: I think perhaps we can, for the record, if your Honor should so rule,—it will require some mechanical work to make that clear, and of course we will also have to do some mechanical work on our particular omissions that we are seeking. We hope that doesn't have to come to pass.

The Court: He has exhibited to me the 200 series. I noticed the red checks opposite the names, as well as opposite the paragraphs, so that for the purposes of the present discussion that is a sufficient identification, but it would not be I don't suppose for the purposes of the record.

Mr. Kenny: That's right.

The Court: When we speak of the record, of course we speak with the most tender concern for

those who sit above us and review the conduct and acts, and look for and find the many mistakes the trial judges make.

Mr. Kenny: Of course, after this offer is made we will have specific objections to, perhaps, all of the documents, or at least certain ones, but I won't further interrupt counsel's offer at this time.

The Court: Mr. Dixon?

Mr. Dixon: The Government offers in evidence those portions of documents numbered 301, 302, 303, 304, 307, 310, 313, 320, 321, 322, 409 and 504, which are not enclosed with red pencil marks.

The Court: Which are the ones not enclosed?

You offer all those portions of those documents which are not enclosed in red pencil?

Mr. Dixon: That is right.

The Court: Have you seen those?

Mr. Margolis: We have.

The Court: Very well. We understand your motion.

Now does that complete your offer?

Mr. Dixon: That does, your Honor.

The Court: Let me see your exhibits.

Mr. Rubin: Here are those offered in toto.

(The documents referred to were passed to the Court.)

The Court: Are those arranged in numerical order now?

Mr. Rubin: Those are offered in toto and these are the partials.

(The documents referred to were passed to the Court.)

The Court: Has everybody copies here so that we know what we are talking about?

Mr. Kenny: We almost have copies. There are a few that we don't have. [1847]

Mr. Garrett: I will refer to Mr. Margolis' copies, except at the start of the consideration, the exhibits which are identified only by the stipulation, possibly my need for attention to the contents of them may be resolved by a ruling upon my objection that there is no foundation as to the defendant Sherman.

The Court: I will examine all the documents. Your offer is now made?

Mr. Rubin: Yes, your Honor.

Mr. Kenny: And I think that our objection is made.

The Court: I understood you wanted to extend your objection.

You mean on that one ground of objection?

Mr. Kenny: That is the first objection, as to the partially offered documents.

The Court: Very well.

In Wharton's Criminal Evidence, Section 785, 11th Edition:

"A question may sometimes arise as to whether or not the entire document should go in evidence by the party producing it. This is a matter that, if questioned, ought to be left entirely to the discretion of the trial judge. The better rule is that a party offering a document should offer only that part relevant to the ques-

tion at issue, leaving [1848] to the other side to use the remainder afterwards."

And under the California law the other party can offer in evidence the remainder of the document, if he desires it, either at that time or subsequently.

"And when one writing refers directly or indirectly to another for a fuller description, the admissibility of the first writing involves the admissibility of the second writing."

In other words, that seems to be the rule.

Mr. Kenny: Yes. I call your Honor's attention to that last sentence you read. You will find upon examining these that many of the writings, that is, one paragraph will be unintelligible if taken out of its context and not read with the paragraphs both before and after. That I think is the heart of the matter. If there were something that was entirely——

The Court: I will have to resolve that in each instance.

Mr. Kenny: That is just about it.

The Court: I will have to resolve it by reading each document.

Mr. Kenny: Precisely, your Honor.

The Court: In connection with the other exhibit here I was unable to resolve it because I didn't have the letter in front of me. [1849]

Mr. Kenny: That is right.

The Court: So that will be my ruling, that they can be admitted in part without admitting them in



toto, although the other side may offer the remainder of the documents in evidence if they choose as the ruling may be made.

Mr. Rubin: As a part of their case.

The Court: Naturally, if they are offering the exhibits in evidence.

Mr. Dixon: May it please the Court, I think Government counsel should state for the record at this time the reason, although your Honor has already ruled on it, why the proffer or the offer is made in this manner.

I believe an examination of the documents submitted for partial admission will show that at least in our opinion there are many matters referred to in those documents which in my opinion, are not only irrelevant to the issues in this case but which also in a few instances refer to matters which the Court has already ruled immaterial.

The Court: You are entitled to limit the scope of your cross examination by limiting your direct examination.

Mr. Dixon: That is right.

The Court: And by the same token you are entitled to limit an exhibit that is offered to the particular portions that you deem to be material, subject to the ruling of the Court. [1850]

Mr. Dixon: That is right. It is within the discretion of the Court, your Honor, as we view it. And we further agree with the position taken by Judge Kenny that anything that is offered in that manner may be explained, if there is any ambi-



guity in what is offered, from any of the contents of the rest of the document at the request of the defendants.

We do not, however, regard the rule as going so far as to permit the defendants to put in as their part of the case matter which we regard as irrelevant and immaterial, although a part of the document, and that is the reason for offering them only partially so that that part which is regarded as material may be presented to the Court and to the jury. [1851]

Mr. Kenny: I take it the court is finally going to read these documents before ruling as to each one of them. That is, your general ruling was——

The Court: That's right. I have to determine it from the document itself, and from the whole evidence in the case and the issues as framed whether or not, for instance, on 201, the first document here offered partially, whether or not the things offered are material to the government's case, whether or not they are the only things that are material to the government's case, if they are admitted—that is to say, if they are admitted in evidence, whether or not the government should be compelled to admit the other things as well as part of their exhibit.

Mr. Kenny: Plus the other thing, that is, if the excerpt taken out of its context doesn't make sense——

The Court: That goes to the second statement that I made.

Mr. Dixon: That's right.

The Court: That is part of the consideration from which one arrives at a conclusion whether or not the remainder of the document should or shouldn't be admitted as being material or immaterial.

Now, these documents that are offered in toto, the numbers of which I will not review, but which I have together—I am just glancing through them—they appear to be strike committee meeting minutes, is that correct? [1852]

Mr. Rubin: I think most of them are. There may be a few others that are not. Practically all of them are.

The Court: 236 does not, 203—I thought you said you arranged these in order. 206 is in for identification now; 236, 203, 231 appear not to be minutes.

Mr. Rubin: 206, if your Honor please, is covered by paragraph 4(a) of the stipulation.

The Court: 236.

Mr. Rubin: Pardon me.

The Court: 203 and 231 appear not to be minutes. They appear to be letters. One is a notification.

Mr. Rubin: There is testimony in the record with respect to certain of those letters, if your Honor please, from Miss Evanisevich.

The Court: All right. How do you wish to present your objection—to those offered in toto, or—I suppose you have a general ground of immateriality to everything?

Mr. Margolis: Yes, we have special objections to some of them. Just to give your Honor an example, we can take the first one which is offered in toto, No. 238.

Does your Honor have a copy of that?

The Court: Yes, I have, but it is not in order.

Mr. Margolis: I have the exhibit here.

The Court: The original?

Mr. Margolis: Yes. [1853]

Mr. Margolis: If your Honor wants me to indicate generally, without indicating as to which of the exhibits they would apply,—

The Court: Yes.

Mr. Margolis: We would object, of course, on the ground that all of the testimony concerning activities in support of the attempt to obtain the agreement are irrelevant and immaterial; that they are cumulative, and at this point unnecessary to establish that there was an attempt to obtain an agreement. That is really not an issue in this case.

That as to some of the minutes, there will be portions that mention defendants who were not present at the meetings, or it does not appear that the defendants were present at the meetings, and as to them it would be hearsay. There are portions of the minutes which are simply unintelligible without explanation, and therefore are immaterial and irrelevant as offered, and that generally they are outside of the issues [1857] of the case.

By making this general statement, your Honor, I merely am trying to—

The Court: I thought if you would make that statement I would keep it in mind in reading these over overnight, so in reading a particular thing I would have in mind your possible objection to it.

Mr. Margolis: I do not intend to preclude myself, your Honor—I think generally that covers it.

The Court: Very well. We will recess until 10:00 o'clock tomorrow morning. [1858]

Mr. Kenny: Your Honor, I have just one matter in my department of the case, and that is, I was a little puzzled by counsel's statement——

The Court: He said he was going to offer all the cards too.

Mr. Rubin: Yes, they are offered. That offer has been made.

Mr. Margolis: With regard to those cards, if they are accepted in evidence we are going to ask that photostatic copies be made so that the organization can have its records back. They have taken away basic records of the organization. We don't mind as to the original letters and that sort of thing, if they go in evidence, why the originals can go in and it will not interfere with the conduct of the organization, but I do not believe that we should be permanently deprived of the basic records.

The Court: These are your books?

Mr. Margolis: They are in effect our books. They are application cards. They have basic information on them which is essential to the conduct of the organization.

Mr. Dixon: We have no objection, your Honor, to substituting photostatic copies for them if counsel want the originals.

The Court: You mean the Government will furnish the photostats? [1859]

Mr. Dixon: I cannot go that far, no, your Honor, from the point of view of providing them, I mean.

Mr. Margolis: Perhaps a summary could go in evidence, that the Government could prepare a summary and we could furnish some blank cards as exemplars of what the cards are, but we do have to have the records back.

Mr. Rubin: I think that can be worked out, counsel. We don't have any desire to embarrass the organization by having their basic cards taken from them.

The Court: All right. See if you can work that out. [1860]

\* \* \*

CARL B. TENDICK,

called as a witness by and on behalf of the government, having been previously sworn, resumed the stand and testified as follows:

Cross-Examination

(Resumed)

By Mr. Margolis:

Q: Mr. Tendick, the Fish and Wild Life Service located in this area first started making these market reports for San Pedro and Santa Monica in August of 1945, is that right? A. Yes.

Q. Under what circumstances did they start making these reports and for what purpose?

A. Well, under the office of the Coordinator of



(Testimony of Carl B. Tendick.)

Fisheries, we had started making similar reports on the pilchard landings at Monterey, San Francisco, and Southern California.

Q. Pilchard is a technical term for what? [1868]

A. Sardines. Then we received an appropriation for the fiscal year 1946 to open the Market News office in the San Pedro area. It took us approximately a month to make our contacts and arrange to get the information, set up our equipment, and consequently we did not get started, actually publishing the reports, until the 1st of August.

Q. And you selected San Pedro and Santa Monica as the place to start, is that right?

A. Yes.

Q. And I assume it took you another month or two to get going as far as San Diego is concerned, is that correct?

A. Well, I think it was about a month and a half later when we started San Diego.

Q. You started in October. Then why didn't you have a report for Newport Beach to start with?

A. Well, we were pretty well crowded at first. We had been unable to make arrangements as to selection of an aide down there.

Q. Selection of a what? A. An aide.

Q. An assistant?

A. Yes, an assistant to collect the information. We were a little bit uncertain as to whether we were going to have enough funds to include Newport



(Testimony of Carl B. Tendick.)

Beach in our market reports, particularly since the pilchard reports was taking a [1869] great deal of our funds.

Q. The original reports which you issued contained what information?

A. The original reports——

Q. Starting in in August and September, what information did they contain?

A. It contained the reports of daily landings of sardines or pilchards, reports—well, at that time the season was only open at Monterey and San Francisco in sardines, and the Market News data, I mean the market reports from the dealers at San Pedro and Santa Monica. That was as much as we started with at the very first.

Q. Contained reports in terms of poundage only?      A. Poundage only.

Q. Did you ever have information in the reports of the price?

A. We have on several occasions gotten information on price. However, we did not publish it.

Q. Never published information concerning price?      A. No, not that I recall.

Q. The fact is you have published information concerning price, isn't it?

The Court: Counsel, I don't know what difference it makes. If he has, why not call it to his attention. I don't know that this witness, his testimony should be subjected to [1870] tests of veracity.

(Testimony of Carl B. Tendick.)

Mr. Margolis: I am testing his recollection on these matters, your Honor. I am certainly not challenging the witness' veracity, but his recollection on matters.

The Court: His recollection on these things, he testified he compiled them from reports; he has made available the reports to you; whether he recalls or not, I don't see that it makes a great deal of difference, counsel. [1871]

\* \* \*

Q. Well, isn't it a fact that in August and September of 1946 your office published prices, reports on prices?

A. They may have. I was away on a trip to Seattle at that time.

Q. Seattle publishes prices all the time, does it not? A. I think they do. [1872]

\* \* \*

Q. Let me ask you this question then: Isn't it a fact that the general practice was not to publish prices until August of 1946 when, at the request of some of the dealers, you started to publish prices?

A. As I say, I was in Seattle in August 1946. OPA prices were in effect at the time we started the Market News. For that reason we didn't deem it advisable to include prices. [1874]

Q. Are you publishing prices now?

A. They were fairly well generally known throughout the industry, what the OPA ceilings were, and we didn't attempt to collect them.

Q. That is the reason the prices were not published at the beginning? A. Yes.

(Testimony of Carl B. Tendick.)

Q. Then you started in August 1946 because then there was no OPA?

A. That was when we started.

Q. Then you stopped publishing prices in September 1946, isn't that right?

Mr. Schwartz: If the Court please, I object on the ground——

The Court: It is wholly immaterial, counsel. The objection is sustained. You have the records there and if they are published they are published, if they are not published they are not published. It does not make any difference what reason this witness assigns, or whether he remembers it or does not remember it.

Mr. Margolis: I assume I will have to make an offer of proof on this subject. [1875]

\* \* \*

Q. (By Mr. Margolis): I have a document dated September 12, 1946, being a report of the United States Department of the Interior, Fish and Wildlife Service, Division of Commercial Fisheries, Market News Service, and a similar one for September 13, 1946.

First I will ask that they be marked for identification at this time. I think they can be given sub-numbers of the same exhibit.

The Clerk: H-1 and 2.

The Court: All right.

(The document referred to was marked Defendant's Exhibits H-1 and H-2 for identification.)

Mr. Margolis: September 12 is the H-1 and September 13 is the H-2.

Q. I show you two reports which have been marked for identification H-1 and H-2, dated September 12 and 13, 1946, respectively, and ask you whether or not those are copies of reports issued by your department concerning which you have been testifying.

The Court: Let's see. That is September 1946?

Mr. Schwartz: That is correct, and I object to the question, first of all, on the ground that the witness has not [1876] testified to any matters in September 1946, and if he has they are wholly immaterial to the issues in this cause. [1877]

The Court: September '46 is immaterial.

Mr. Margolis: This is a foundation question, your Honor, I submit.

The Court: Whatever occurred in September, 1946, concerning price or these other things is immaterial in this matter.

Mr. Margolis: The conspiracy charge goes right on through; it doesn't stop, your Honor. It doesn't say, the indictment——

The Court: The indictment was returned August 25th, and this is subsequent to the return of the indictment, and it alleges the conspiracy continued up to the time of its return. It is wholly immaterial. The objection is sustained.

\* \* \*

Mr. Kenny: Your Honor, was the date of the indictment the 19th, or what was that date?

The Court: August 25, 1946.

(Testimony of Carl B. Tendick.)

Mr. Margolis: I have similar documents to those which have been marked as H-1 and 2, dated August 20th and 21st, your Honor, which I will ask to be marked for identification.

The Court: Very well.

The Clerk: I-1 and 2. [1878]

The Court: They may be H-3 and 4.

(The documents referred to were marked Defendants' Exhibits H-3 and H-4, for identification.)

Q. (By Mr. Margolis): I show you two documents that have been marked for identification as Defendants' Exhibits H-3 and 4, being headed as reports of the Wild Life Service, dated August 20th and 21st, 1946, respectively, and ask you whether or not those are market reports issued by your division of the same type concerning which you have been testifying. A. They are.

Q. I direct your attention to the fact that on page 2—withdraw that. The fresh fish reports are contained in each instance on page 2 of the document, are they not? A. Yes.

Q. And I direct your attention to the last column over to the right on page 2 of each of those documents, the column being headed, "Newport Beach Area, Price Range"; can you tell us what that column is intended to indicate?

Mr. Schwartz: Just a moment. If the court please, I object to the question and any similar questions on the ground that the prices of fresh fish



(Testimony of Carl B. Tendick.)

compiled by this office have absolutely nothing to do with the issues in this case. I don't know, but I suspect that the defendants' strategy here is to show that their prices were fixed or there was collusion or something as regards the dealers and the Department of the [1879] Interior, or whatever his strategy may be, but it certainly has nothing to do with the issues in this cause, namely, whether these defendants violated the Sherman Act in attempting to force a price-fixing contract on the dealers in San Pedro and the other areas mentioned in the indictment. That the issues here are pretty plain, they are pretty narrow, and this has absolutely nothing to do with it.

\* \* \*

Mr. Schwartz: My objection goes to the ground of immateriality and irrelevancy to the issues in this case, your Honor.

Mr. Margolis: We submit it is material, your Honor, because it shows the economic conditions under which these fishermen are operating——

\* \* \*

Mr. Margolis: I intended to ask him next where he got the information concerning these matters. The foundation has been laid for it——

The Court: I can't see what possible difference that would make where this witness got the information on price range for these. It just seems to me to be immaterial. The objection is sustained.

Are those the daily reports?

Mr. Margolis: Yes, daily reports. H-3 is August 20th and H-4 is August 21st. [1882]



(Testimony of Carl B. Tendick.)

Q. (By Mr. Margolis): Now you started obtaining information from Newport Beach on June 17, 1946, did you not?

A. Approximately that date.

Q. Is there any particular reason why that date was selected?

A. Well, we wanted to start the Newport Beach as soon as we could. We had been down and made several trips to Newport Beach trying to locate an aide to collect the data for us.

We finally discovered that the cost of an aide would be greater than getting the information directly by telephone, so we proceeded on the basis of making personal calls from our office to the dealers there.

Q. Does the fact that the strike was on at that time have anything to do with the starting to obtain the information?

A. No, we had been planning it throughout the previous winter.

Q. You do not have any data for Newport Beach prior to June 17, 1946, but you do have data for Newport Beach subsequent to June 1946, isn't that right?

A. That is right.

Q. Now it is a fact, is it not, that the report for June of 1946 covers a period of 13 days? [1883]

A. That is right.

Q. And during that 13 days it is shown that there are 234,490 pounds of landings of fresh fish at Newport Beach?

A. Yes.

Q. Is it also a fact, is it not, that those landings

(Testimony of Carl B. Tendick.)

were very much larger for that period of 13 days than for any other comparative period of which you have any records?

A. I couldn't say because I haven't examined the statistics to determine that point.

Q. We have here the monthly report for June 1946 which shows only information for Newport Beach June 17 to 30, showing 234,490 pounds, is that correct? A. Yes.

Q. Then in July of 1946 your report for Newport Beach covers the entire month, 31 days, is that correct? A. That is correct.

Q. And for the entire 31 days of July 1946 your report shows 302,438 pounds of landings at Newport Beach, is that right? A. That is correct.

Q. And for the month of August your report covers the entire month for Newport Beach, does it not? A. Yes.

Q. And during that entire month your report shows 289,477 pounds of landings at Newport Beach, is that correct? [1884] A. Yes.

Q. And your report for September 1946 for Newport Beach also covers the entire month, does it not? A. Yes.

Q. It shows 328,652 pounds of landings for the entire month? A. That is correct.

Q. Then for the month of October 1946 your report also covers the entire month, does it not?

A. Yes.

Q. And for that month it shows 219,361 pounds of landings at Newport Beach? A. Yes.

(Testimony of Carl B. Tendick.)

Q. The month of November, your report covers the entire month for Newport Beach, and shows landings of 161,309 pounds for that entire month, is that correct? A. That is correct.

Q. The month of December 1946, the entire month is covered for Newport Beach, and shows 279,891 pounds, is that right?

A. That is right.

Q. For the month of January 1947 your report shows the entire month for Newport Beach and shows 228,183 pounds, is that right?

A. That is right. [1885]

Q. Now I think the last month that you brought us is February. I guess that is the last report you have, is that right, Mr. Tendick? A. Yes.

Q. And for the month of February you have the entire month showing 278,220 pounds?

A. That is right.

Q. At Newport Beach? A. Yes.

Q. In your previous testimony you stated that when Mr. Hinkle goes down to the market in San Pedro there is nine chances out of ten he is going to find out or be informed as to whether there is anything coming in at Santa Monica. Now by that you meant that Mr. Hinkle, when he went to San Pedro, would get information at San Pedro concerning what was coming in at Santa Monica?

A. Not necessarily the amounts or the species of fish, but if there was any great volume or any scarcity at Santa Monica it would be reflected inside San Pedro.

(Testimony of Carl B. Tendick.)

Q. In other words, he would know what was coming in at Santa Monica by judging the flow of fish that was coming in at San Pedro, is that right?

A. Not at all.

Q. How would he know? What information would he gain at San Pedro that would tell him when the fish was coming in [1886] at Santa Monica and in what quantities?

A. He naturally would inquire about the market conditions in general.

Q. At San Pedro?

A. At times. I mean to say, he can observe, for instance, if fish are coming in and he can ask any of the dealers, "Well, is there anything coming in at Santa Monica?"

Q. He asks the dealers whether fish is coming in at Santa Monica?      A. He can.

Q. And the dealers would give him information, the dealers in San Pedro would give him information as to fish coming in at Santa Monica, is that right?      A. They can.

Q. Is that what you were referring to there in that answer?

A. Absolutely. Just the same as he can see whether fish boats are at the dock at San Pedro, and he might inquire of some of the dealers whether they would know whether there was any fish coming in at Santa Monica.

Q. Then he gets that information and from that he knows approximately what volume of fish are coming in at Santa Monica, is that right?

(Testimony of Carl B. Tendick.)

A. No, he calls the dealers at Santa Monica.

Q. But that gives him a sort of a double check?

A. Yes, that is right.

Q. As to whether the Santa Monica dealers are telling him the truth? A. Yes.

Q. And I assume likewise he can inquire of the Santa Monica dealers about what is going on in San Pedro?

A. Well, he can make his own observations there by seeing the actual boats.

Q. He sees the actual boats in San Pedro, too, doesn't he?

A. Yes. I say at San Pedro he can observe the actual boats. We have another, a further check on the vessels which operate below the border in that the Customs has data on their volume of landings.

Q. But when he goes to Santa Monica he can get information at Santa Monica from the dealers concerning San Pedro, isn't that right?

A. He probably could, although I have never heard him asking the Santa Monica dealers such a question.

Q. Were you present when he talked to Santa Monica dealers?

A. At times. We are in the same office, just adjoining rooms with the door open.

Q. He goes to the wharf to see the Santa Monica dealers, does he? [1888]

A. No, he phones them.

Q. I see. A. Or his clerk phones them.

Q. Does he also check with the San Pedro deal-

(Testimony of Carl B. Tendick.)

ers as to what is coming in at Newport Beach or San Diego?

A. Not particularly. Occasionally one of them will volunteer and tell him. [1889]

\* \* \*

Q. (By Mr. Margolis): Do you know how the dealers get this information concerning what is happening in other ports?

A. Well, there is several customs brokers there, fish brokers there, who sell the fish to the fishermen, and they can inquire from them, I presume, what is coming in at other ports.

\* \* \*

Q. (By Mr. Margolis): Do you know whether they phone other dealers located in other ports to obtain this information?

A. I couldn't say; I don't know.

Q. You have been getting data on price, is that right? You have been collecting data on price?

A. Occasionally at the request of our office we would make what we call spot observations.

Q. What do you mean by "request of your office?" Do you mean the Washington office?

A. For instance, when the OPA ceilings were removed our office requested that, I think it was twice a week, we make observations on price to see whether there was any increase or decrease in prices. [1890]

Q. Those requests came from your Washington office?

A. They came from our Washington office.



(Testimony of Carl B. Tendick.)

Q. And those are the only purposes for which you have collected price data?

A. Other than the short period they were published.

Q. The reports concerning which you have been testifying are not intended to include cannery fish, are they?      A. Not intended to, no.

Q. Except for the fish that you have testified is purchased at Santa Monica and delivered by truck from Santa Monica to the cannery?

A. Yes.

Q. With that single exception the reports are not intended to include cannery fish, is that right?

A. That's right.

Q. The reports are not intended to include fresh fish shipped in by truck or railway from other points, are they?      A. No.

Q. Is there a specific list of dealers to whom you go to get the information which is contained in the reports?      A. Yes.

Q. Could you give us the names of the dealers from whom you get this information?

Mr. Schwartz: I object to that.

A. I couldn't offhand. [1891]

The Court: Objection sustained.

Mr. Margolis: Your Honor, it may not—

The Court: This whole line of testimony goes to, whether there was or wasn't a flow of fish whether it was interfered with, or whether a conspiracy existed to interfere with the flow of fish.

(Testimony of Carl B. Tendick.)

Q. (By Mr. Margolis): Do your reports include information [1893] of anchovies and sardines caught and sold to the dealers?

A. There is some sold to the dealers.

Q. Do the reports include that information?

A. They do, if they are purchased by the dealers.

Q. If the same sardines and anchovies are sold directly by fishermen to the little bait places along the beach, are they included? A. No.

Q. If they are sold to sport boats, or directly to barges, are they included?

A. No. We don't classify that as going into the wholesale fresh fish trade.

\* \* \*

Q. (By Mr. Margolis): There are wholesalers located away from the port, that is, in Los Angeles City and in other localities away from the port, who deal in fresh market fish, that is so, isn't it?

A. Well, there are wholesale dealers who handle fish in other ports—other points, yes.

Q. I am not talking about other ports; I am talking [1894] about in Los Angeles, for example.

Mr. Schwartz: If the court please, I am going to object to that—

The Court: The witness answered the question, as I recall, before. He testified his reports dealt solely with the fish that was bought there at the seaboard, at the different ports. Is that correct?

The Witness: That's right.

Mr. Schwartz: It was my understanding that this witness was brought back so that he could be

(Testimony of Carl B. Tendick.)

examined as to these documents which he produced.

Mr. Margolis: Your Honor, we had not completed our cross-examination.

The Court: Let's go on with whatever it is. This isn't a controversy between this witness and the fishermen; nor is it a controversy between the fresh fish dealers and the fishermen.

Mr. Margolis: If your Honor please, certain reports have gone into evidence, and we want to find out what is and what is not included in those reports.

The Court: Go ahead and ask the question. Where it is material and proper I have admitted them, and where it isn't I have sustained an objection.

Q. (By Mr. Margolis): Do you know whether any fish is sold directly by fishermen to downtown dealers? [1895] A. I couldn't say.

Q. You don't know one way or the other?

A. No, I don't know.

Q. Also, there are some dealers who handle relatively minor quantities of fresh fish ordinarily, is that right?

Mr. Schwartz: Just a minute. What was that? I object to the question, if the court please.

The Court: Objection sustained.

Q. (By Mr. Margolis): On page 1483 of the transcript you testified that there may be a few minor ones—referring to dealers there—that handle small quantities—you are referring to fish, and then

(Testimony of Carl B. Tendick.)

you went on to say that they handle small commercial quantities.

Now, how many such dealers are there?

The Court: Wasn't he just testifying concerning those? Doesn't the transcript say at other ports than these main ports, wasn't that the testimony?

Mr. Margolis: I am not talking about other ports.

The Court: If you are asking the witness in cross-examination with reference to the transcript, I think it is only fair to give him the whole transcript. [1896]

Mr. Margolis: I certainly would be glad to let him look at any portion of the transcript he wants to.

The Court: What page is it?

Mr. Margolis: 1483.

The Court: What difference does it make? The whole thing is immaterial, selling minor quantities of fish.

Mr. Margolis: Perhaps those quantities were not minor in May and June of 1946. We have a right to inquire into it.

The Court: Let's get at it then.

Mr. Margolis: I am trying to lay the foundation for it.

The Witness: What is the question that you have reference to?

Q. (By Mr. Margolis): The question I have reference to is on the top of page 1483. I thought

(Testimony of Carl B. Tendick.)

you might read a little bit before to see what we are referring to.

A. The question here is with reference to Santa Monica.

Mr. Schwartz: As to these relatively small dealers?

The Witness: Yes. I think there are a few little waystands along the Santa Monica pier that occasionally buy directly from fishermen.

Q. (By Mr. Margolis): There are other minor dealers in other ports, are there not?

A. In most other ports. [1897]

Q. In most other ports? A. Yes.

Q. And your reports concerning which you have testified here do not include the fish delivered to those dealers? A. No.

Q. And you do not know whether there was a substantial increase in fish handled by those dealers in June of 1946, do you?

\* \* \*

The Witness: I do not.

Q. (By Mr. Margolis): Do you have any data at all in your office concerning the volume of these types of fish, cannery fish, fish shipped in by truck or railway, fish sold to these minor dealers, fish sold to sport boats, fish sold to bait places, fish sold to men like this man Vitalich who doesn't make reports—do you have any data at all in your office concerning the amount of fish delivered to those places in the month of June, 1946?

A. Not at the present time, I do not.

(Testimony of Carl B. Tendick.)

Q. Now on page 1482 of the transcript you testified, "We have had that situation several times at San Diego when there was no fish delivered and we would check to find out whether it was just a failure of our aide to obtain a report or whether it was actually true that there was no fish obtained."

About how many times has that occurred?

A. I couldn't say offhand. As I mentioned, I think before we sometimes have had difficulty in receiving communications and we are not always certain that when a report is not received that it actually meant that there was no fish landed or that there was no report to be made, and we have to check up on those at times to find out what the situation is.

Q. Your investigation has revealed, has it not, that you do not get accurate information from San Diego, is that right?

A. I wouldn't say one way or the other on that. I can't prove it.

Q. You don't know whether your investigations have revealed that the information is accurate or inaccurate?

A. That is true.

The Court: Have you ever had any complaints of inaccuracy?

The Witness: No, sir.

\* \* \*

The Court: They are marked for identification.

Mr. Margolis: The dailies are part of 40?

The Clerk: No. 39.

\* \* \*



(Testimony of Carl B. Tendick.)

Q. The daily reports have been marked for identification here as Government's Exhibit 39 for identification, and I have taken from those reports dated June 17, 18, 19 and 20. Those are the copies of those reports, are they not?

Q. I note that on each of those reports—I want you to examine the reports and see if what I say is correct—under the words “San Diego area” there is the statement “No report received.”

A. That is true.

Q. That means, does it not, that information for those days, that you received no information as to whether there were or were not any landings at San Diego and if there were landings the quantity?

A. We did not on that particular day. We may have received word later.

Q. You may have received word later?

A.. Yes.

Q. Well, I will hand you—if you had received word [1903] later it would be included in some later report, would it?

A. It should be. I don't know.

The Court: What dates are those?

The Witness: June 17, 18, 19 and 20.

The Court: 1946?

The Witness: 1946.

Q. (By Mr. Margolis): I will hand you the complete file of reports and ask you to find any later report in which those dates are recorded.

A. Well, they may have been checked out as having been stated.

(Testimony of Carl B. Tendick.)

Q. Just to help you to save time, you will find that I pulled them out in order. He is June 21.

A. (Examining documents) No, I do not find any report where he states that there were or were not any landings on those days.

Q. And as far as your figures for the month of June are concerned, when you give the total landings—and when I say June I mean June 1946—when you give the total landings for San Diego they do not include, as far as you know, whatever landings there were on the 17th, 18th, 19th and 20th of that month?

A. I do not know personally for the simple reason that I was on vacation those particular days.

Q. But you are familiar with these reports?

A. It would be customary for Mr. Hinkle after not receiving reports several days to check with his aide at San Diego to find out whether it was a case that there were no landings or whether it was just a case that he had failed to receive their report.

Q. Well, isn't it a fact——

A. But the mere matter of fact that we on that particular day did not receive a report would not necessarily mean that that was a case where there were no landings.

Q. You don't know if there were landings?

A. I would not ordinarily, not being there, but Mr. Hinkle, I am sure, would have checked on that matter.

Q. Isn't it a fact that in these reports, when you don't get a report from San Diego for a day or two

(Testimony of Carl B. Tendick.)

days, it is your practice when you get those reports to make a statement that reports for several days are included under a single total?

A. That is true.

Q. And there is no such statement with regard to the dates of June 17, 18, 19 and 20, is there?

A. No, there is no statement with respect to those days. [1905]

Q. I notice on these reports—the monthly reports I am talking about now, which are part of Government's Exhibit 40, for identification—there is a table headed "Monthly Cold Storage Report"; I wonder if you could tell us what that is.

A. It is the report of fish frozen, under one heading, and holdings of frozen fish in storage, in cold storage houses in the State of California.

The Court: That is where?

The Witness: In the State of California.

The Court: That is not only Southern California?

The Witness: No; the State of California as a whole.

The Court: Do you have it divided into areas, like Los Angeles?

The Witness: No, we do not.

The Court: Well, you do in subsequent reports, don't you?

The Witness: No, not—the monthly cold storage report is collected through our Washington, D. C. office and they mail us this data for publication.

Q. (By Mr. Margolis): Just by way of ex-

(Testimony of Carl B. Tendick.)

ample I am referring to the February, 1946 report so that we can identify what some of these things mean. On page 7 of that report you have the heading "Monthly Cold Storage Report," and that includes as you say all of California; now on the left-hand column is a column headed, "Species," then a subheading [1906] "Frozen Fish and Shellfish" with various kinds of frozen fish and shellfish listed,—that refers to the species, isn't that right?

A. Yes.

Q. Then you have an item "Bait and Animal Food," under the general column "Frozen," February, 1946, 26,818; does that mean that during the month of February, 1946 there were 26,818 pounds of bait and animal food frozen—gone through the process of freezing during that month?

A. Yes.

\* \* \*

Q. (By Mr. Margolis): Just one more preliminary question. When I asked you about this report, your answers will hold true generally as to the meaning of figures and so forth in all of these reports under this heading, would they not?

The Court: Well, under the column "Frozen" it means frozen that month, isn't that right, no matter whether it is shellfish or barracuda or—

The Witness: Yes.

Q. (By Mr. Margolis): That is true in all of these reports regardless of the month, it is not only true for February, 1946? A. That is true.

\* \* \*

Q. (By Mr. Margolis): Then your practice is

(Testimony of Carl B. Tendick.)

on that column to give the current month, February, 1946, the preceding month January, 1946, and the same month for the preceding year, in other words, February, 1945 in this particular instance?

A. Yes.

Q. And each of those columns under the general heading "Frozen" is intended to indicate the total number of pounds frozen during that month?

A. That is right.

Q. Then we have total holdings as another main heading, and in the particular report we are talking about, one column headed, "March 1, 1946," another column headed, "February 1, 1946." and another column headed, "March 1, 1945"; now, is it or is it not a fact that the poundage there, for example, under "Bait and Animal Food" 162,009 pounds is intended to indicate the total number of pounds of frozen bait and animal food in this particular case, on hand as of that particular date in the State of California.

A. Yes, in the cold storage, in the regularly recognized cold storage houses.

Q. And among them, for example, is the Union Ice Company? A. Yes. [1909]

Q. That is in Wilmington, isn't it?

A. Yes.

Q. And there are several of them in Los Angeles and other places? A. Yes.

Q. Is that figure in terms of pounds?

A. It is.

Q. Or tons? A. Pounds.



(Testimony of Carl B. Tendick.)

Q. Now with regard to these monthly cold storage reports, directing your attention to the one for June, 1946, it is a fact, is it not, that during the month of June, 1946, more fish were frozen than during the month of May, 1946?

\* \* \*

The Witness: Not according to these figures, they are not.

Mr. Margolis: I mean slightly less. Excuse me.

\* \* \*

Q. Now for the month of June there were approximately 425,000 pounds of fish frozen and for the month of May slightly over 457,000 pounds, is that right? A. That is right.

Q. About 32,000 pounds less in the month of June than in the month of May? A. Yes.

\* \* \*

Q. I want to direct your attention to page 2 of the June, 1946 market report and on the bottom half of that page there is a column headed "Fish Imports, Arizona and California"? A. Yes.

Q. I wonder if you would explain to us what that is intended to indicate.

A. That indicates the volume of those products, that is, fish imports, fish, shellfish and other fishery products which are across the border at the various ports of entry, from Arizona and California, and——

The Court: From foreign countries or other states?

The Witness: From foreign countries.



(Testimony of Carl B. Tendick.)

The Court: Only?

The Witness: Yes.

The Court: What about the high seas?

The Witness: Yes, we get it from the San Diego customs too.

The Court: That is only when it goes through customs?

The Witness: That is only what goes through customs, and it is reported to the customs representatives at the various ports.

Q. (By Mr. Margolis): Does it include the amounts brought in by boat?

A. It includes the amount brought in by boat if it is a true import.

The Court: That is, if it goes through customs?

The Witness: Now, we have boats, American boats, that have to make entry too, which is not an import.

Q. (By Mr. Margolis): Let me ask this: American [1916] fishermen go fishing in Mexican waters, do they not?

A. Some of them, yes.

Q. From San Diego, Newport Beach, and San Pedro?

A. Yes.

Q. And then they catch their fish in Mexican waters and then they bring it back up here for disposal in the United States at these ports?

A. That is true. We do not class that as an import.

Q. You do not class that among this type of fish?

A. No.

(Testimony of Carl B. Tendick.)

Q. On the June, 1946 report this would show the type of fish that was brought by truck, railway express, as far as the method of delivery is concerned, is that correct?

A. Yes. There is some that actually comes by boat.

Q. That is, delivered by boat but not necessarily the same boat that caught the fish?

A. That's right.

Q. It is merely a method of transportation?

A. Yes.

Q. So here the grand total for June of 1946 of 1,307,164 pounds indicates that in the month of June there was delivered through the customs that many pounds of the various species of fish there listed, is that right?      A. Yes.

The Court: That is canned and frozen and every kind? [1917]

The Witness: Yes, various types of fishery products.

The Court: Whether canned or otherwise?

The Witness: Yes.

Q. (By Mr. Margolis): There is practically no canned fish that comes in from Mexico, isn't that right?

A. There is 119,000 pounds of canned abalone there, as I see one item.

Q. Where it is canned, it is shown as canned, is that right?      A. That is true.

Q. For example, you have the first type of fish

(Testimony of Carl B. Tendick.)

that is listed in June, cabrilla—is that the way you pronounce it?       A. Yes.

Q. 31,230 pounds. That is fresh fish, is that right?       A. Yes.

The Court: Frozen?

The Witness: It will probably be fresh.

The Court: All right.

Q. (By Mr. Margolis): That would be true of the other types of fish, except where it is indicated that the fish is canned, is that right?

A. Yes.

Q. All right. That total of 1,307,164 pounds includes approximately 120,000 pounds that are canned, is that right? [1918]       A. Yes.

Q. So there will be a little over 1,100,000 pounds fresh?

A. Well, there is some of that that is your other fisher products, your livers and fish sounds and fins.

The Court: Sounds? What is that?

The Witness: The bladder.

Q. (By Mr. Margolis): In order to get the fresh fish, then, should we take the subtotal——

A. Under fish.

Q. (Continuing) Under fish—would that include the shellfish?

A. It would include certain items of shellfish.

Q. So if we took the subtotal following shellfish—subtotal for fish is 309,000 pounds.

A. Yes.

Q. It is a couple hundred more, but I am taking

(Testimony of Carl B. Tendick.)

the round number, 309,000 pounds, and for shellfish the subtotal is 753,000 pounds?

A. That's right?

Q. Those two items are a little over 1,000,000, from which you would have to deduct 120,000, is that right?

A. Yes.

Q. In the month of July, 1946, there is 196,000 pounds of fresh fish and 385,000 pounds of shellfish, from which you [1919] have to deduct about 170,000 pounds of abalone canned, is that right, or you have a total of approximately a little over 400,000 pounds of fresh fish as compared with about 800,000 pounds in June, is that right?

A. Yes.

Q. We were last talking about July as compared with June of 1946, is that right?

A. Yes.

Mr. Margolis: I have no further questions.

\* \* \*

### Redirect Examination

By Mr. Schwartz:

Q. Mr. Tendick, you were asked by Mr. Margolis on [1921] cross-examination concerning the keeping of the records at your office of all fish which comes in for the fresh fish market. Is that your understanding?

A. Yes.

Q. Does your office attempt to get the figures of fishermen or kids who go out on the pier with a bamboo pole to get their figures of their catch?

A. Only what is deemed commercial fisheries.

Q. And if a kid goes out and get some fish with a bamboo pole and sells it to a retail market, is your office interested in getting those figures?

A. No.

(Testimony of Carl B. Tendick.)

Q. Or if somebody gets out in a skiff and catches more fish than he thinks he can eat, and sells the balance to a retail dealer, does your office try to get that kind of information?

A. No.

Q. Now with respect to the compilations which were made by your office, I believe you stated that as to San Pedro there was one dealer who did not report to your office.

A. That is true. [1922]

\* \* \*

Q. You do not know of your own knowledge why that company will not give your office the information that you seek?

\* \* \*

The Witness: I don't know.

\* \* \*

Q. Is your office in any way interested in the business of the fish dealers beyond the information that you seek, either personally or by telephone?

\* \* \*

The Witness: Only in so far as it concerns the various other statistical information which we endeavor to collect from them in general.

Q. (By Mr. Schwartz): Now does your office, as a matter of policy, have any interest in concealing or issuing any false statements in these market news reports? A. No.

Q. Now, to the extent then that as to the practice of [1923] your office in gathering and compiling statistics for your market news service is concerned, and in so far as that relates to these

(Testimony of Carl B. Tendick.)

two compilations which you have produced here, would you say as to the San Pedro-Santa Monica situation that that include all of the figures that were reported to your office?

A. Yes.

\* \* \*

Q. (By Mr. Schwartz): On these totals that you are asked about in regard to the frozen fish in the state of California, do you have any knowledge of your own that would indicate to you where this fresh fish is frozen, whether it be northern California or southern California, and which would be greater?

A. I wouldn't know. The information is collected from our Washington, D. C., office.

Q. Would you know whether that fish is frozen whether it came from ports within the state of California, outside [1924] the state of California or from points other than the West Coast?

A. I would know some species that are not produced here.

Q. And would those species come from points, say, on the East Coast of the United States?

A. Some of them.

Q. Or the Gulf Coast?

A. Some of them.

Mr. Schwartz: I have no further questions, your Honor.

The Court: Any further questions?

Mr. Margolis: No questions.

The Court: You may be excused, Mr. Tendick.  
(Witness excused)



The Court: You say you have two more witnesses?

Mr. Schwartz: Yes, and neither one will be very long.

The Court: You mean about a minute apiece?

Mr. Rubin: I might increase that to three. I know the third one will only be a minute. I am only going to ask him two questions. He is from San Diego.

Mr. Garrett: I should desire to cross examine on that witness, I know, your Honor.

The Court: On the San Diego witness?

Mr. Garrett: Yes.

Mr. Rubin: Then I would not venture to put him on before [1925] the noon recess.

The Court: All right. Recess to 2:00 o'clock. Remember the admonition.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock of the same date.)

\* \* \*

Mr. Schwartz: The usual stipulation, your Honor.

At this time I would like to make reference to Exhibit 34. Reading the totals thereon for all species of fish for the month of——

\* \* \*

Mr. Schwartz: I want to read for the month of March, 1946 the total of 485,560 pounds; the month of April, 638,887; the month of May, 1946, 477,056; the month of June, 1946, 60,623 pounds. And this document refers to [1927] deliveries of fish to San Pedro and Santa Monica, wholesale fish dealers.

\* \* \*

## WILLIAM J. CARLISLE

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: William J. Carlisle.

\* \* \*

## ALBERT V. MOORE

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

\* \* \*

## Direct Examination

By Mr. Schwartz:

Q. Your name, sir? A. Albert V. Moore.

Q. Your occupation, Mr. Moore?

A. Bookkeeper for the Bay Fish Market, Santa Monica.

\* \* \*

## Cross Examination

Mr. Margolis: Shall I make my offer of proof, your Honor?

\* \* \*

The Court: Very well.

\* \* \*

Mr. Margolis \* \* \* Then I have another offer of proof with regard to the witness Tendick. Your Honor will recall that yesterday there was a matter which arose during the giving of testimony and I haven't had an opportunity to submit it.

(Testimony of Albert V. Moore.)

At that time I was cross examining the witness Tendick with regard to the reasons for discontinuing the giving of information relating to prices on their Fish and Wildlife reports, which are in for identification as Government's Exhibits 39 and 40.

In that connection, I offer to prove that if we were allowed to ask appropriate questions along the line to which objection was sustained, that the witness would testify as follows:

That they obtained the price information from the various fish dealers which was given to them in the same manner as information concerning the number of pounds purchased.

That after keeping records of those prices for a while they found, through further investigation, that the information concerning rate ranges which had been given to them was, in fact, not correct and that there were no rate ranges on the purchase of fish but that there were single prices.

That they then went to the various fish dealers, confronted [1978] them with the fact that they were not getting accurate information, and that being so confronted the fish dealers refused to give any further information concerning fish prices except occasionally and sporadically and refused to do it on a daily basis thereafter.

\* \* \*

Mr. Margolis: Those are my entire offers of proof.

(Testimony of Albert V. Moore.)

The Court: Do you wish to be heard?

\* \* \*

Mr. Margolis: \* \* \* Now, with regard to the Tendick matter, it goes to the reliability of the figures obtained by the Wild Life Service.

\* \* \*

(The jury returned to the courtroom at 4:05 o'clock p.m.)

\* \* \*

The Court: Ladies and gentlemen of the jury, the testimony of the witness Mr. Carlisle, who preceded this witness on the stand, and this witness, as well as Exhibits 47, 48, 49 and 50, are stricken. You are instructed to disregard the testimony of both of them and each of them and to disregard the exhibits. They are stricken in all respects except one thing as to each witness, that during the month of June, 1946 Mr. Carlisle's firm, the Santa Monica Seafood Company, bought fish in Santa Monica, and during the month of June 1946 Mr. Moore's firm, the Bay Fish Market, bought fish in Santa Monica. The reason being that it is immaterial whether or not they bought 60,000 pounds or 50,000 pounds or whatever number of pounds of fish they bought during the month of June in Santa Monica.

Mr. Kenny: In other words, the jury—I just want to make this clear, your Honor—the jury is to disregard all the testimony since 2:00 o'clock this afternoon except those two facts, that they bought fish, is that right?

(Testimony of Albert V. Moore.)

The Court: You mean we have had two witnesses this afternoon?

Mr. Kenny: That is all. These are the only two witnesses and they are to erase everything in their minds except those two facts.

The Court: Except those two facts, that each of them testified that during that month of June their respective firms bought fish in Santa Monica.

I might make it a little clearer to you by stating again what I have stated to you before, that the defendants are on trial here for conspiring to restrain the trade and commerce in fresh fish, for making an agreement to do so; they are not on trial for actually doing so. That evidence [1995] is offered by the Government only, and is to be received by you only, in connection with your conclusion, if the case gets to you, as to whether or not they agreed to do so.

Is that clear to everyone? (Assent.)

This witness may be excused, and you can take your exhibit back.

(Witness excused.)

The Court: The exhibits are stricken from the files. The Clerk will cancel the exhibit numbers and use them again.

(Government's Exhibits 47, 48, 49 and 50 respectively ordered stricken.)

\* \* \*

Mr. Margolis: That has been completed, all of them that have been completed. I want to speak with regard to that.

With regard to Exhibit 24, that is the shipment—what is the name of that company, Seattle——

Mr. Rubin: Los Angeles-Seattle Motor Express.

Mr. Margolis: Los Angeles-Seattle Motor Express. We were able to make our examination, get the information we wanted with one exception. At the bottom of Exhibit 24 is written in ink: "Total Weight from Oregon points was 658,236 pounds for same period. Grand total 2,266,417 pounds." Then the initials W. C. FF."

Mr. Rubin: You are talking about West Coast Fast Freight [1998] now.

Mr. Margolis: All right. The information that our bookkeeper receives is that the information with regard to Oregon points was not gathered here at all, but was gathered in Oregon, and was sent down here from Oregon and prepared under somebody else's supervision, and was simply added to these figures.

That is not true of the information with regard to the Seattle points, which precedes that portion of the exhibit, and on which we were allowed to see the books.

The Court: I think the witness testified to that on the stand.

Mr. Margolis: He did so testify?

The Court: Yes, I think he testified he had here certain documents, that he had to depend on someone else. One witness did.

Mr. Margolis: I don't remember that. If this exhibit went in in its entirety, and if the record so shows, we would move to strike the portion with



regard to Oregon, the portion that I read, on the ground there is insufficient foundation. It wasn't prepared under the supervision of the witness; the books aren't available to us for checking. And if it isn't clear from the record that that is the situation with regard to that information, and the government believes that the facts are different than I have represented them to be, [1999] we want the witness to come back so we can make the record clear on that.

Mr. Rubin: No. 24 is not in evidence.

Mr. Margolis: Yes. I think your Honor reserved the ruling until such time as we would have an opportunity to examine it. We would want the witness back for only one point, if it is not already clear in the record, and that is to establish that the information at the bottom of the last page in ink came from Oregon, was not prepared under the supervision of the witness, or of anybody working under his direction or control; that he has never seen the books, knows nothing about them, and that the information was simply sent from another point. If there be a stipulation that he would so testify, we need not call the witness back, your Honor, then we can make our objection at the time that the document is offered in evidence.

Mr. Rubin: I think, if your Honor please, that the testimony as to this document referred to the portion which is on the first page as to the points of origin, and it refers on the first page to Seattle and Washington points to Los Angeles and San Diego points. That is the only—

Mr. Margolis: You don't intend to offer the ink part?

The Court: I think somebody asked him about that.

Mr. Margolis: If there is no intention to offer the part in ink, your Honor, we have no desire to call the witness [2000] back. We have seen the records and we are satisfied.

\* \* \*

The Court: Very well.

The offer has been made on behalf of the Government—have you finished looking through the original documents?

Mr. Rubin: Yes, your Honor.

The Court: I will hear your objections.

Mr. Andersen: This offer goes with respect to those offered in their entirety?

The Court: The offer goes to everything. He made his offer the other day.

Mr. Margolis: We are prepared completely to make our objections to those in their entirety and on the part of the others, we need a little more time on the ones that were just marked this morning.

\* \* \*

The Court: \* \* \* I have read all of the documents which they have offered in their entirety, in fact, I have read all of the documents which they have offered except some of the latter ones that I figured there was no use in reading because I didn't understand what portions were being offered. I read them with the statements which you had made the other evening of your objections in summary form.

I cannot see how your objections in particularizing them [2011] to any of these documents could or should be sustained. They all seem to me to be material, to relate to the situation, to be relevant; they are not surplusage in the sense that there is a lot of cumulative matter of material here. So it would seem to me that these would be admissible.

Now you perhaps can point up your objections.

Mr. Margolis: Very well, your Honor.

The Court: But they start in here just before the time of the strike—I am making this statement, counsel, to keep in mind the fact that all the evidence relating to the strike is only admissible and material as going to showing an agreement. In other words, that the defendants are not here on trial for a strike or for picketing.

Mr. Margolis: If your Honor please, there was one thing that I might dispose of generally first, and I think it may have been disposed of already, but I would like to be heard on it.

Our primary position is that any document offered in part should go in in its entirety as to all documents. If, however, as I understand your Honor's ruling to be, it is that your Honor will admit documents in part, then of course we intend to make an objection in part.

The Court: I think the law permits a document to be admitted in part, offered and admitted in part, on behalf of the person offering it. But in doing so it must all be presented to the Court and the other side may at that time or [2012] later offer the entire document.

Mr. Margolis: Then I would like, if I may, your Honor, to restate our objection, so that the record may be entirely clear with regard, at this time, to all of the exhibits which are being offered in their entirety, to-wit, as I have them: 206, 207, 211, 212, 213——

The Court: Wait a minute. 206, 207, 208. That was identified before.

Mr. Margolis: Maybe I am confused. I was limiting myself to the stipulation, and we would like to keep the others separate, if we may, your Honor.

The Court: All right. 206, 207, 211, 212——

Mr. Margolis: 213, 214, 215, 216, 217, 219, 220, 225, 227, 401, 402, 405——

The Court: 403.

Mr. Margolis: 402, your Honor? 402 and 403?

The Court: 403, yes, in its entirety.

Mr. Margolis: Excuse me a moment, your Honor.

The Court: Do you have a copy?

Mr. Margolis: Apparently we don't have a copy. We will ask for a photostatic copy. Very well, your Honor, then we will go to 403.

We will ask to look at some of those in a few moments, your Honor, if we may. 405——

Mr. Rubin: 404 did you call? [2013]

Mr. Margolis: I guess we don't have a copy of that either. 404, 405, 406, 406-A, 311, 312, 314, 317, 328, 332, 333, 334, 203, 218——

Mr. Rubin: Wait a minute. I don't have 334 on my list.

The Court: 334 yes. 203.

Mr. Margolis: 203, 218, 231, and 236.

Now, that is our complete record of those that are being offered in their entirety, pursuant to the stipulation as to foundation.

The Court: Very well.

Mr. Margolis: Am I correct in that?

Mr. Rubin: Yes, my list conforms to that.

Mr. Margolis: Does that check with your Honor's list?

The Court: That seems to be the record I have, except as to Exhibit 42.

Mr. Margolis: 42 are the cards?

Mr. Rubin: 42, 43 and 44, that is a separate classification.

The Court: Are they offered in their entirety?

Mr. Rubin: Yes, your Honor.

Mr. Margolis: Could we treat that separately?

The Court: Is that under the stipulation?

Mr. Rubin: Yes.

Mr. Margolis: Yes, they are under the stipulation, but they are cards and are in a little different classification. [2014] I would like to eliminate from this particular objection 42, 43 and 44 and 45.

The Court: Very well. As to all of these, they are all strike minutes, except 332, 333, 334—

Mr. Margolis: 203.

The Court: 203; 218 seems to be—I don't know whether it is the whole minutes, it is just a resolution. Anyhow I will treat it separately. 218, 231, and 236.

Mr. Margolis: That is correct.



The Court: Except for that all of the others you called off on the list are minutes of meetings, either strike committee or general meetings of the union, and beginning not prior to May 27th, as far as I can see, and going up into June.

Mr. Margolis: As to each of these exhibits, if your Honor please, we object as to each of them in their entirety, and as to each and every paragraph and sentence of each of said exhibits on the following grounds: that they are irrelevant, immaterial, ambiguous, and unintelligible, cumulative, and hearsay as to all of those defendants who, first, are not shown on the face of the documents to have been present at said meetings, that is, with reference to the committee meetings; and, second, not connected up as to all of those defendants who appear to have been present but are not shown to have participated on the face of said minutes in said [2015] meetings.

\* \* \*

The Court: Yes. And on those grounds at this time I will overrule the objection, subject to your motion to strike, as I have ruled in connection with other matters. In other words, if at the conclusion of the case, conclusion of the government's case, you deem it wise and care to make a motion to strike, I will at that time give consideration to the points which you have made here.

Mr. Margolis: I understand that. I would like to make certain specific references, if I may, your Honor.

With regard to Exhibit 207, which are the minutes of May 30, 1946—does your Honor have that?



The Court: I have it right here, yes.

Mr. Margolis: The next to the last paragraph, particularly that which reads: "Moved, seconded, and carried, that Jeff Kibre be recalled to San Pedro for the purpose of assisting strike committee in expediting matters in reference to strike," that that is hearsay with reference to the defendant Jeff Kibre.

The Court: There will be the same ruling on that. [2017]

Mr. Margolis: May I see Exhibit 227?

(The document referred to was passed to counsel.)

Mr. Margolis: With regard to 402, I would like to object on the same grounds as have heretofore been stated with respect to 328 and 411. It is a similar set of minutes and obviously——

The Court: Dated when?

Mr. Margolis: Dated March 24, 1946.

The Court: That is the Santa Monica unit?

Mr. Margolis: That is correct. There is a lot of material which I think perhaps your Honor would want to look at.

The Court: Let me look at 402 while I have it in mind.

(The document referred to was passed to the Court.)

The Court: I remember reading this because I didn't figure out what the red numbers were under the names. I do not see what this has to do here:

"Communication from Seattle OPAC office of

our monthly paper. CIO strike finance committee and copies of telegrams to Senators Murray, Knowland and Downey on support of Pepper minimum bill."

Mr. Rubin: We are not interested in that, your Honor. That can go out.

The Court: "And opposition to Case Bill were read for information." I cannot see what that has to do with this issue. [2018]

Mr. Rubin: So far as we are concerned, that may go out.

Mr. Kenny: Don't you want that in, Mr. Margolis? That proves it is a labor union.

Mr. Margolis: Your Honor please, I meant that the entire exhibit should go out.

The Court: You said that there were some things in there that were material also in stating your objection.

Mr. Margolis: I am not going to ask for that to go out.

Mr. Rubin: We will stipulate that that is immaterial.

Mr. Margolis: Maybe I can help by pointing out what I had in mind.

The Court: I think I am getting along here.

I cannot see how this is material, anything in this is material to the issues in this case.

Mr. Rubin: If your Honor please, on the second page is the portion which we deem material, which reads as follows: "Motion made, seconded and carried that we elect an executive board of 11 members, two from Redondo and two from Santa Monica."

Underneath that appears: "Ballot for president. McComas 13, Bullo 9." And beneath that, "McComas elected."

McComas is one of the defendants in this case. That indicates that Mr. McComas was elected president of that union. We submit therefore it is material. That is the purpose of the document going in.

The Court: Then this ought to go over to the portions [2019] of documents which you want to admit in part because the rest of it is certainly not admissible.

Mr. Rubin: Yes, your Honor.

The Court: This second page?

Mr. Rubin: That is correct.

The Court: All right, Mr. Margolis.

Mr. Margolis: May I see 406 and 406-A, your Honor?

(The documents referred to were passed to counsel.)

Mr. Margolis: Now with regard to 406 particularly, I think it is covered by my general approach on the thing so I won't have to particularize, and we can make our motion to strike later on.

Now with regard to 312, there is a similar reference, about the middle of page 1, to Jeff Kibre. It is obvious on its face that he was not present. It is an invitation for him to come.

Our objection is on the ground that it is hearsay, not connected up with him.

The Court: Yes. That same ruling on that, that there will be a separate motion to strike.

Mr. Margolis: I understand. I just wanted to have it for the record.

Now if your Honor please, with regard to 314, we are particularly going to ask that the first portion of that, all of page 1 and the first portion of page 2, be stricken. That [2020] relates to an incident of some difficulty with the police.

\* \* \*

Mr. Rubin: 314 should go in the partial.

The Court: How are you going to indicate that now—by dots or dashes?

Mr. Rubin: I will have Mr. Dixon indicate it. He is handling the handwriting.

The Court: By the red encirclement, is that it?

Mr. Margolis: Now, if your Honor please, with reference [2025] to 317, I will submit to the court that the first two paragraphs of that exhibit are unnecessary. Again they refer to an incident which would require a lot of explanation, which might be prejudicial, and which is not necessary. It refers to a veteran and anti-union complex, and it just seems to me it adds nothing, really, to the case, and we would feel obliged to have considerable explanation of that incident.

Mr. Rubin: What document?

The Court: 317. Document 317 is a peculiar document. I can't tell which is the first two paragraphs. It starts out on a line "Red Zentner reported inter"—that is in typewriting, and the rest of the words are in pencil. Somebody got tired of typing, I guess.

Mr. Margolis: It goes into a collateral issue again, your Honor.

Mr. Rubin: Do you wish to hear from me, your Honor?

The Court: Yes, surely.

Mr. Rubin: With respect to this document, if your Honor please, we submit that the portion indicated by counsel is material for this reason: these are minutes of Newport Beach, and as your Honor notes it states somebody interviewed Blackie Squires and Blackie said he would respect picket line and would sell to fair markets, but would not join the union.

The Court: Unless somebody antagonized him.

Mr. Rubin: That is correct. And then the next motion [2026] is that Squires be placed on probation for 30 days on the ground that he suffered—Lloyd Munson came in—on the ground he suffered from an anti-union complex due to his war experience.—Carried.

If your Honor please, we deem that is material for this reason: it indicates that they were practicing placing non-union men on probation with respect to their picket duty. We submit that that is material in this case. It is part of the proof that they agreed to prevent non-union persons from delivering fish to the markets.

Mr. Margolis: Well, assuming, your Honor, that that is correct, there is considerable other material in the minutes to the same general effect, that they asked non-union men—there is testimony, as a matter of fact, that they asked non-union men to



serve on the picket line, and they gave them clearance cards. There is testimony in the record to that effect. And this just gets us into a collateral issue, and there is a danger of prejudice.

The Court: That is no legal ground of excluding it if the government desires to press its admissibility. It is material under the indictment.

Mr. Margolis: It could be excluded, your Honor, on the grounds, at this point, that it is cumulative, and there is more danger of its being prejudicial than there is of it doing any good in this case.

The Court: I can't substitute my judgment for that of the government counsel as to whether it is prejudicial to their case.

Mr. Margolis: I say prejudicial to our case. There is a portion of it which is prejudicial to us without being relevant. I am particularly concerned about this question of veterans and anti-union complex due to war experience.

We would have to go in and explain what was meant by that. That is the part I have particular reference to, that is prejudicial to us.

The Court: You object to that "Moved and seconded that Squires be placed on probation for thirty days"——

Mr. Margolis: That is right.

The Court: From there on, that is what you object to principally?

Mr. Margolis: That is the principal thing.

The Court: "on the grounds he suffered from a anti-union complex due to his war experiences?"

Mr. Margolis: That is the main thing.



The Court: Do you have any objection to striking that out, beginning "on the grounds he suffered," and so forth, that paragraph?

Mr. Rubin: We have no objection to that going out, if your Honor please. Of course the word "carried" wouldn't mean anything. [2028]

The Court: All right. I will draw a green line around this to indicate that on Exhibit 317 the following words encircled in green will not be admitted: "on the grounds he suffered from a anti-union complex due to his war experiences."

Here it is, so if counsel intends to read it to the jury you will see my green mark.

Mr. Rubin: Yes, your Honor.

The Court: Do you see it?

Mr. Margolis: Yes.

Mr. Rubin: Perhaps counsel would have no objection to the matter being interlined by the court. We certainly have no objection. One reason we haven't marked these things before is——

Mr. Margolis: We do prefer to not have these minutes interlined.

There will be a problem to show these partial minutes to the jury. How is that going to be done?

Mr. Rubin: We just propose to read them.

The Court: The documents that are admitted in part should only be read to the jury.

Mr. Margolis: Very well. Next, your Honor, I want to refer to 203. That is toward the end, fifth or sixth document from the end.

The Court: Yes? [2029]

Mr. Margolis: I want to——

The Court: You are going over 332, 333——

Mr. Margolis: I have stated my general objections. I have nothing to add with regard to them.

The Court: Very well.

Mr. Margolis: With regard to 203, I want the objection that this appears to be a carbon copy, it is unsigned, there is no showing that it was mailed, and it is not connected up in any way with the issues in this case.

The Court: Whether it was mailed or whether it wasn't mailed it is admissible as an admission against interest made by Mr. Zafran, the foundation having been established. And that, it would seem to me, would be about as far as the probative value of this would go.

Mr. Margolis: Shall I proceed, your Honor?

The Court: Counsel here is waiting——

Mr. Rubin: We are not waiting on the court, your Honor.

The Court: All right. I think that 203 would be limited to that purpose, as an admission against interest only as to Gilbert Zafran. The objection will otherwise be overruled.

Mr. Margolis: Except as to an admission against Gilbert Zafran, I understood your Honor to mean that the objection would be sustained.

The Court: What I mean to say is this: That your [2030] general objections that you have made will be overruled. The specific and particular objections which you made just now that it does not show that it was mailed, that it was received, will be sustained; but it will be admitted in evidence as

an admission against interest only of Gilbert Zafran.

Mr. Margolis: Thank you, your Honor.

Mr. Rubin: Now, so that the record will be clear, just as many of these documents refer to specific defendants, this is just one of such documents.

The Court: I think you are correct, counsel, in that. It will be admitted in evidence as an admission against interest——

Mr. Rubin: Subject to a motion to strike?

The Court: Subject to a motion to strike as to any other defendants that might not be connected with it. In other words, I think we had better keep the record in that state until we get around to the point of determining whether or not a case has been made against anyone or all.

Mr. Margolis: I make the same objection with regard to 231, your Honor.

The Court: There will be the same ruling there.

Mr. Margolis: May I see 236?

The Court: I thought that was in evidence. There was some testimony that that was handed to somebody.

The Clerk: It is marked for identification, your Honor. [2031]

Mr. Rubin: If your Honor please, there is a duplicate, a carbon copy of that in evidence, which is the exhibit that went in through Mr. Ross, that was handed to Mr. Ross. That particular document was used in examination of Miss Evanisevich.

Mr. Andersen: That is the one we had the long fight about, I think.

The Court: What do you mean the long fight?

Mr. Andersen: I stand corrected, your Honor.

Mr. Kenny: "A."

Mr. Andersen: That is the same as 502, isn't it? No, I am sorry.

Mr. Rubin: If your Honor please, that document was offered because it was the subject of Miss Evanisevich's testimony that that document was dictated to her by Mr. Zafran who at that time was the business agent of the union.

Mr. Margolis: We object on the ground that it is cumulative. Of course, that is in our general objection.

The Court: Yes. That objection is overruled.

Now, you have stated your special objections to this batch that are offered in toto? [2032]

Mr. Margolis: Yes.

Your Honor, we are not quite ready with respect to——

The Court: To those offered in part?

Mr. Margolis: With respect to those offered in part.

The Court: On these that are offered in toto, the objections will be overruled—pardon me. Did you have something?

Mr. Rubin: If your Honor please, there are certain other exhibits which have been identified through other witnesses, some of which are also part of the stipulation. We might dispose of those at this time too.

The Court: Let us dispose of these that we started out with as a block here and then we will take those up as another block.

The Court: The objections are overruled except as indicated with the one exhibit as to the portion omitted and the other two exhibits for the limited purpose, and the following exhibits are admitted in evidence: 206, 207, 211, 212, 213, 214, 215, 216, 217, 219, 220, 225, 227, 401, 403, 404, 405, 406, 406-A, 311, 312, 317 which has the stricken portion, 328, 332, 333, 334, 203, which is admitted for the limited purpose as an admission against interest and not to show that it was mailed, 218, 231, the same limitation as 203, and 236.

\* \* \*

(The documents referred to were received in evidence as indicated above and marked Government's Exhibits Nos.: 206, 207, 211, 212, 213, 214, 215, 216, 217, 219, 220, 225, 227, 401, 403, 404, 405, 406, 406-A, 311, 312, 317, 328, 332, 333, 334, 203, 218, 231 and 236.)

\* \* \*

The Court: You asked if there were some other matters. You say that there are some other matters?

Mr. Rubin: Yes. These other documents which went in by other witnesses.

The Court which you have identified by other witnesses?

Mr. Rubin: Yes, your Honor. Do you want to consider [2034] those at this time?

The Court: I thought all the documents were in evidence except perhaps one.



Mr. Rubin: No. if your Honor please, those documents, for example, concerning which Mr. Agliano testified to, and also another document, No. 37, to the Bayside Fish Market——

The Court. That is the one that had the enclosure, 37?

Mr. Andersen: Yes, your Honor.

Mr. Rubin: That was withdrawn.

Mr. Andersen: That was withdrawn by Mr. Schwartz.

Mr. Rubin: That is right.

Then document No. 28 and 27 and 209, all of which were identified by Miss Evanisevich.

The Court: And they are on the stipulation?

Mr. Rubin: Not all of them, no, your Honor, because they all weren't produced.

The Court: In other words, you filed those and then you shifted from that method to the stipulation method?

Mr. Rubin: That is correct.

The Court: These are offered in full?

Mr. Rubin: That is right, your Honor. And you reserved ruling on some of them. [2035]

\* \* \*

Mr. Margolis: I can go through these rather quickly, your Honor. Let me take these first.

With regard to the following documents which have been offered in part, your Honor: 301, 302, 303, 304, 307, 310, 313, 319, 320, 321, 322 and 504, we make the same objection to each and every part and the entirety of each of said exhibits as was made to the last series of exhibits.



We have some specific matters also to take up with respect to them.

The Court: Let's see, 301 are minutes, 302 are minutes, 303 are minutes, 304 are minutes——

Mr. Margolis: They are all minutes, your Honor.

The Court: They are all minutes?

Mr. Margolis: Yes, your Honor.

The Court: And they are all minutes of Newport Beach except 504?

Mr. Margolis: That is San Diego.

The Court: That is San Diego minutes?

Mr. Margolis: Yes.

The Court: I thought 504 was already admitted in evidence.

Mr. Rubin: No, your Honor.

Mr. Andersen: I don't believe so.

Mr. Margolis: In the series that I started with, your Honor, from 301, did I skip any?

The Court: Yes, 305 and 306.

Mr. Kenny: The Government isn't offering 305 and 306.

Mr. Margolis: I mean, did I skip any of what the Government has offered?

The Court: Just a moment. 311 they offered.

Mr. Andersen: Not in this group, your Honor.

Mr. Kenny: That was in toto.

The Court: That is right. That is in toto.

319 they did not offer—wait a minute. Maybe it is over on the next page. [2037]

Mr. Kenny: No, they didn't offer 319.

The Court: No, they did not offer 319.

Mr. Margolis: It is marked up.

The Court: They offered 313.

Mr. Margolis: I withdraw the objection to 319 then.

Mr. Rubin: I am sorry, if your Honor please. Our copy is marked up too, so it should be on the list.

The Court: It isn't.

Mr. Margolis: Are we treating that as offered or out?

The Court: It is not offered.

Mr. Rubin: Then at this time, if your Honor please, we offer 319.

The Court: On the same basis?

Mr. Rubin: Yes, your Honor.

The Court: All right. I will put it on here.

Mr. Kenny: In all or in part?

Mr. Rubin: In part.

Mr. Margolis: It has been marked up.

The Court: 504 and 505 is in.

That seems to be all of the series of partials in the 300 and 500 series. It is not in the 200 or 400 series.

Mr. Margolis: Yes. I have to take those up separately because they were marked differently and I got confused.

The Court: Very well. Now on these you make the same objection that you did before? [2038]

Mr. Margolis: Yes, your Honor. And in addition I want to ask specifically with respect to 304, page 3, your Honor—

The Court: Does somebody have a carbon copy of that or photostatic copy or some kind of a copy?

(The document referred to was passed to the Court.)

Mr. Margolis: There is a paragraph, a short sentence, reading: "A Jap fish peddler named Endo with red truck went through. Watch him." We would like to have that eliminated because we think it might be prejudicial as far as one of the jurors is concerned, and it is not necessary to prove the Government's case. It is cumulative. We see a danger of creating a prejudice on a matter which has no relation to any issue in this case as against the defendants that is greater than any probative value that this might have, particularly in view of the fact that it is cumulative. [2039]

Mr. Rubin: We will stipulate that sentence may go out.

Mr. Dixon: We feel it is material, but we nevertheless will agree to take it out if counsel wants it out.

The Court: What are you doing about it now?

Mr. Margolis: This is my copy, your Honor. Where is the original?

The Court: We just handed you the originals, the clerk did.

Mr. Kenny: I have it.

Mr. Margolis: I am pretty clear on these. It is the other group I am mixed up on.

The Court: All right. Just a moment now. I will draw a green line around it, which means leave it out.

Mr. Margolis: We want to ask that if they are admitted if our objections are overruled, we want to ask that certain additional parts be admitted.

The Court: Your general objections will be overruled.

Mr. Margolis: Then, if your Honor please, we ask, with regard to 301, that the omitted portion on page 1—when I say “omitted portion,” the part marked for omission.

The Court: Encircled in red, yes.

Mr. Margolis: Be admitted as part of the exhibit.

The Court: All of it?

Mr. Margolis: All of the portion on page 301 which is marked in red. And so our offer may be complete, we [2040] also offer each and every sentence and paragraph thereof.

The Court: I don't think it is material, counsel. Your objection is overruled, with the privilege to you to offer it. I don't see how it is material even if you offer it yourself. I can't see how it can effect the controversy.

Mr. Margolis: As to 304, we ask that the omitted part on page 1 thereof be made a part of the exhibit.

In each of the instances where we make an offer of this kind, or request, will it be understood that we make it as to the entire part of the minutes and as to each and every sentence and paragraph?

The Court: Surely. I think that the objection should be overruled on that, with the privilege, however, to offer it in evidence by the defendants. That is 304, the encircled portion. All right. Next?

Mr. Dixon: Pardon me, judge. I think you have our copy of 304. If we may borrow it back for a minute.

The Court: They object to the introduction of the document unless that is also admitted.

Mr. Dixon: The part we have excluded?

The Court: Yes; that opens up the same argument that we had with Ross.

The objection is overruled. Let's pass on.

Mr. Rubin: I don't think the record is clear on this point. [2041]

The Court: Whatever the record shows, the defendants' objection as to 304 is overruled.

Mr. Margolis: 307, if your Honor please, and the omitted part on page 1.

The Court: "Commend Col. Hunter's letter to Commander Bennet. Housing Act hearing." I can't see the materiality of this. Objection overruled.

Mr. Margolis: With regard to 310, if your Honor please, to the omitted part, we ask that the omitted parts on pages 1 and 2 be included as part of the exhibit.

The Court: "Joe Doakes, registration committee, reports that the letters are being mailed to the union members on the small boats and fresh market fishermen."

I don't know. I suppose the Government must know what the letters are. It certainly is not plain from this what is meant.

Mr. Margolis: If that were the test, your Honor, there would be an awful lot of exhibits that wouldn't get in. As a matter of fact, It is one of the grounds

of our objection, that there are many parts of these exhibits which are ambiguous yet they have been admitted in evidence.

The Court: It looks to me like both of those—I suppose they must have something to do with the strike. I haven't read the rest of these minutes of the particular area with the idea in mind to see if they had appointed a registration committee. I notice the rest of them at the beginning of the strike appointed a registration committee and different [2043] committees.

It looks to me like both of those could very well go out.

“Moved and seconded central executive board be contacted in regard the action planned when albacore show at San Pedro.”

Mr. Dixon: Your Honor please, we are more concerned perhaps about this letter that Joe Doakes refers to. Frankly, we do not know what that letter refers to. We have not a copy of it.

The Court: I will overrule the objection on that and sustain the objection as to the second paragraph, that is to say, I will admit 310 in its entirety except the paragraph beginning “Joe Doakes.”

Mr. Margolis: With regard to 313, your Honor, we ask that the omitted portion on page 1 thereof be made part of the exhibit.

The Court: It looks to me like all that is material.

Mr. Dixon: Prior to the introduction of that part, “discussion and reading of the proposal entirely accepted by the San Pedro dealers”——



The Court: Just a moment now. 313?

Mr. Dixon: Yes, your Honor. Do we have the same exhibit, page 1?

The Court: 313 appears to be page 1 and the encircled portion begins "Phelps suggested we dispense with two of the morning pickets and have those men work their shift out of [2044] contacting boats and crews on the waterfront, one from Hip Hip Hooray, one from (something or other) and one from skiff. Take pamphlets and cards, tack on boats when crews are not aboard. Members answered it was up to the picket captain to use his own discretion in choosing his men. Moved and seconded we accept the report as read with commendation for his action. Question on how to handle prospective members, new fishermen. Discussion and reading of the proposal tentatively accepted by the San Pedro dealers." Is that it?

Mr. Dixon: That is right.

The Court: That is the portion you object to?

Mr. Dixon: That is right.

The Court: I think probably that will be. The rest of it is admissible and should be included, I think.

Mr. Margolis: Your Honor please, this is all part of the same——

The Court: You can introduce it.

Mr. Margolis: All right.

The Court: So I will re-change that red line here. In other words, 313 is admitted in its entirety except the paragraph consisting of two lines be-

ginning with the word "discussion" and the next paragraph beginning with "general discussion."

All right.

Mr. Margolis: 321, your Honor, is the next one I want [2045] to refer to. We ask the omitted portions on pages 1 and 2 be made part of the exhibit.

The Court: The objection is overruled. 321 is admitted, subject, of course, to the defendants' right to introduce the other part.

Mr. Margolis: 322, your Honor, we offer the omitted part on page 1.

The Court: The objection is overruled, with the right of the defendant to offer it.

Mr. Rubin: Just a second. "Reading of previous minutes"—apparently what defendants may endeavor to do in admitting this is to put in the previous minutes as part of our case, and that is what we object to.

Mr. Margolis: We don't care about that.

Mr. Rubin: We want to know.

Mr. Margolis: I am making that statement.

The Court: This document here—in other words, on the basis that when a portion of a document is in evidence the rest of it can be admitted, this document here can be in evidence. "Reading of previous minutes"—there is nothing in this document to identify what the previous minutes are. The previous meeting might have been a year before.

Otherwise, do you consent that the whole may go in?

Mr. Dixon: We don't have this letter referred to here.

The Court: The letter doesn't appear there. I will sustain the objection. I mean I will overrule the objection.

Mr. Andersen: Might I state that the court's rulings [2047] will look a little indefinite in the record? I wonder if they could be phrased in some different way. Mr. Margolis is offering additional parts.

The Court: I understand that.

Mr. Kenny: Probably it should be: motion denied.

The Court: No, he is not offering additional parts at this time. He is objecting to the introduction of it unless the whole is introduced. I am overruling his objection, subject to his offer or his motion to offer it in behalf of the defendants.

Mr. Kenny: I think that statement of the court clears it up.

The Court: If I granted his motion or denied his motion, I would be denying in advance, it seems to me, a motion which he has not yet made.

Maybe the defendants won't want to offer these when they get around to it.

Mr. Margolis: With regard to 504, your Honor, there are typewritten and then there are written minutes which appear to be—the typewritten seems to be a copy of the written. Do you have both?

The Court: No; I just have the typewritten.

Mr. Margolis: All right.

The Court: These are the ones that were identi-

fied by the cigar maker. The only thing you want in is Frank Agliano [2048] was placed under \$5,000 bond?

Mr. Andersen: Was elected and placed under bond. That is what the government wants.

The Court: Is that all you want in?

Mr. Rubin: That's right, your Honor.

The Court: That disposes of those. Now, what remains?

Mr. Margolis: With regard to 201, 205, 204, 202, 224, 226, 230——

Mr. Rubin: 228?

Mr. Margolis: Is 228 one of those?

The Court: 202, 224, 225—26, I guess that is.

Mr. Margolis: I have no 225, your Honor.

The Court: 226, 228.

Mr. Margolis: Is 228 one of those?

The Court: Yes. And 230 and 233.

Mr. Kenny: Those are all minutes, aren't they?

The Court: Yes, these are all minutes except one, but the government is offering only the parts indicated by red dots.

Mr. Margolis: That is where I got confused on it. It seems to me before we conclude that we ought to have all of these inclusions and exclusions marked in the same way, or it is going to be a very confusing thing.

The Court: The reason, apparently, why this was done is two different men did it, and in the second place these [2049] are typewritten and the others are written in hand.

Mr. Margolis: I am not saying this as a matter

of criticism, your Honor, but as a matter of knowing what we have when these exhibits get all mixed up, as they are likely to in arguing and so forth, we are likely to get into difficulty.

The Court: All right. Then what I will direct when these are admitted is that the clerk shall encircle in red the excluded portion of the minutes, so that they will be the same as the other.

Mr. Margolis: Very well. We will be able to do that on ours also.

With regard to these exhibits, your Honor, we make the same objection——

The Court: Pardon me. On exhibits that you have just mentioned, the ruling will be that as to the names indicated in each one they will all be admitted in evidence and will not be limited only to the names with the dots beside them.

Mr. Margolis: You mean the names of members present?

The Court: The names of persons who were present at the meeting. It is indicated "members present" in one, and in some just "present."

Mr. Margolis: We make the same objections that have previously been made with regard to the other exhibits to each of these exhibits and each and every sentence and paragraph. [2050]

The Court: The general objection will be overruled. [2051]

\* \* \*

Mr. Margolis: Incidentally, I think I omitted 203, did I not?

The Court: 203 doesn't seem to be here.



Mr. Andersen: There is no 203.

Mr. Rubin: 203 went in in its entirety. It was specially admitted.

Mr. Margolis: What is the second numbered one?

The Court: That is 205.

Mr. Margolis: All right.

Mr. Margolis: On your 201, the objection is overruled. 201 is admitted as indicated by the red check marks, and if Mr. Rubin is familiar with the exclusion method of Mr. Dixon and you made these, if you will draw the red circle around the excluded portions.

Mr. Margolis: I am sorry. Your Honor said 201 is admitted?

The Court: The objections are overruled and 201 is admitted as to those on the original here which has red check marks. I will just draw a red circle around the excluded portions.

Mr. Rubin: If your Honor please, there is one slight change on this document which may clarify it somewhat. Do you have the original there?

The Court: Yes.

Mr. Rubin: Mr. Margolis, I am now erasing the original [2052] check mark appearing on page 2 of that exhibit.

Mr. Margolis: In other words, you are offering all of page 2?

Mr. Rubin: There is no part of page 2 which is now offered. We are not offering any portion of page 2.

The Court: All right. Page 2 is out.



205? I suppose you make the same objection.

Mr. Margolis: On 205 we make the same objection to the last two paragraphs.

Mr. Dixon: 202 and 204 seem to be offered.

Mr. Margolis: Their order seems to be reversed. They follow.

The Court: Yes; 201, 202, 204, 205.

Mr. Margolis: Has your Honor ruled on 205?

I put 202 out of order.

The Court: Very well.

Mr. Margolis: On 202, your Honor, we object to it on the additional ground that there is no showing that the document was mailed or received by anybody. It is an unsigned document.

The Court: The foundation establishes that it was a part of the records of the business. The objection will be overruled and it will be admitted except for the portion encircled in red. In other words, the red checked paragraphs are admitted. [2053]

204? It seems to me that they have offered that whole document because there is a red check beside every paragraph.

Mr. Rubin: No, your Honor. There is one slight omission.

The Court: I see.

Mr. Margolis: What is the omitted portion?

The Court: "Moved, seconded and carried that the strike committee ascertain whether we are within the law in taking economic action on Thursday, May 23, 1946."

Mr. Margolis: We ask that the entire document be admitted.

The Court: Do you ask that the entire document be admitted or do you object unless the whole document goes in?

Mr. Margolis: We ask that if any part of the document goes in the entire document goes in.

The Court: Your objection is overruled. The document will be in except for the portion encircled in red.

Mr. Margolis: I want it understood, I have perhaps in stating my objections not stated them as well as they might be, but we do not intend to waive any of our objections to the admission of these documents. It is our intention that if they are admitted to ask that additional parts be admitted as well.

The Court: We haven't gotten to that stage of the proceedings yet. [2054]

Mr. Margolis: As a condition of the admission of the parts offered by the Government.

The Court: On 205, you say the last two paragraphs on the second page?

Mr. Margolis: We ask that those be included.

The Court: "We notified the International office of the conditions here and request their financial, moral and economic support." What is wrong with including that? It doesn't have anything to do with the strike particularly. I think it is immaterial. The objection to 205 will be overruled. I will draw a red line around the paragraphs that are omitted.

Mr. Margolis: On 224, we ask that if the document is admitted that it be admitted in its entirety.

The Court: No. Same ruling.

Mr. Margolis: Same motion with regard to 226.

The Court: The only portion of that that is omitted is one sentence. It will be the same ruling, and I will draw a red line around the omitted portion. 228, that came in for identification, I believe.

Mr. Margolis: Your Honor please, I do not have a copy of that.

The document referred to was passed to counsel.)

The Court: They are excluding the same general textual matter in that.

Mr. Margolis: We make the same motion, if your Honor please, as a condition of the admission of any part of the document that it be admitted in its entirety. [2055]

The Court: The objection is overruled and the document will be admitted with the encircled portion in red excluded. 230?

Mr. Margolis: Same motion, your Honor.

The Court: Same ruling.

Mr. Margolis: Same motion with regard to 233, your Honor.

The Court: It will be the same ruling.

Mr. Margolis: I think that as far as I can tell we have covered all of them, but I am not sure.

The Court: I think so.

Mr. Margolis: If we haven't, I want the record to show that as to any of those that we haven't listed and stated our objections to, we reserve our objections because with this number of exhibits it is possible to overlook one.

Mr. Rubin: I will call them into the record. With respect to documents Nos. 209, 508, and 503, they are listed in the stipulation, and document No. 28 being produced by the defendants I will ask counsel to stipulate that that also is included in the stipulation.

\* \* \*

Mr. Margolis: We do not object as far as foundation is concerned, but we do have other objections. [2057]

The Court: Yes, I understand that. In other words, you accomplish the same effect as you have in your stipulation, and we don't want to get the stipulation mixed up any.

Mr. Margolis: With regard to 28 we object to it being admitted on the ground that there is no showing—I better state them separately. As to 503——

The Court: That is the telegram that somebody identified.

Mr. Margolis: There is no showing that this was ever received by the defendant Ray Morkowski, and if it is admissible at all it is admissible only as an admission against interest.

The Court: Objection overruled. The witness identified that as being in the records of the union in San Diego.

Mr. Margolis: That doesn't show Ray Morkowski received it. Somebody else might have received it and Ray Morkowski never have received it.

The Court: It might be stricken as to all of the others later, but in the present position it is admissible as against all of them.

(The document referred to was received in evidence and marked Government's Exhibit 503.)

Mr. Margolis: If your Honor please, we make the same objection, that there is no showing that the document was either mailed or received, as to Exhibit 28. And on both of these, 28 and 503, that they are irrelevant and immaterial. [2058]

Mr. Rubin: As to No. 28, if your Honor please, there is additional foundation testimony from Miss Evanisevich concerning the practice of taking dictation from Mr. Zafran and placing a copy in the——

The Court: As to 28 the objection is overruled. It is admitted.

(The document referred to was received in evidence and marked Government's Exhibit 28.)

Mr. Margolis: Same objection, your Honor, with regard to 209, 210——

The Clerk: 210 was not listed.

The Court: 503 is admitted. That is the telegram.

Mr. Margolis: 210 is marked for identification.

The Court: The clerk handed me another document here now. 503, that is the one I ruled on a moment ago.



Mr. Margolis: The clerk said 210 wasn't mentioned.

Mr. Rubin: Well, 210 should be included. It has heretofore been marked for identification.

Mr. Margolis: With regard to 209, 210, and 508, we object on the ground that there is no showing that the originals of these letters or any copies thereof were either signed or mailed or dictated by any of the defendants herein; also there is no showing that they were received by any of the defendants, and therefore they are not connected up with any of the defendants. [2059]

\* \* \*

The Court: The objection is overruled. They are admitted.

(The documents referred to were received in evidence and marked Government's Exhibits 209, 210 and 508.)

\* \* \*

Mr. Rubin: There is one other document here. Mr. Margolis, you saw No. 27? That was not produced by the defendants.

Mr. Margolis: Yes, there is no stipulation as to this. The same objection as to the previous document, except that it does appear to be a signature, but it hasn't been identified.

Mr. Rubin: If your Honor please, that was the subject of the testimony of Miss Evanisevich.

Mr. Margolis: That is right. the signature has been identified, but there is no showing that it was mailed or received. [2060]



The Court: Objection is overruled, the document is admitted. No. 27.

(The document referred to was received in evidence and marked Government's Exhibit 27.)

\* \* \*

Mr. Rubin: We have the question of the membership cards. Do you want to dispose of that, your Honor? It might be a good time to, because one of our witnesses may have some testimony concerning the cards. We would like to know if they will be in evidence. It is subject to the stipulation.

The Court: That is to say, they will be returned immediately upon the conclusion of the trial?

Mr. Rubin: It is subject to the foundation stipulation.

The Court: Oh, the foundation stipulation?

Mr. Margolis: Yes, it is stipulated that they are what they appear to be, they are application cards. We object to them on the ground they are incompetent, irrelevant and immaterial. And, as a matter of fact, one of the instructions offered by counsel for the government points out that mere association is not a basis for incriminating anyone, and I don't see what other useful purpose these exhibits could serve. [2061]

\* \* \*

Mr. Margolis: If your Honor please, with regard to 314, without repeating all of the objections previously made with regard to the other exhibits, may it be deemed that the same objections are made to 314? May that be done?

The Court: That will be satisfactory, without repeating them all. Let me look at it.

\* \* \*

The Court: 314 will be admitted in its entirety, and the defendants' objections to it will be overruled, except as to the defendant Sherman, and his objections will be sustained on the ground there is no foundation as to the defendant Sherman.

402?

Mr. Margolis: With regard to 402, we make the same objections as with regard to all the other documents, your Honor. In addition, the objection of remoteness, in that it is not tied in with this case. That exhibit is one of those which shows election of officers at some time prior to the incident involved in this case. There is no showing that those officers continued to be officers.

Mr. Rubin: Of course, under counsel's theory, if your Honor please, it would be necessary to introduce evidence that at the precise moment he was an officer, and that he had not resigned the instant before. [2087]

Mr. Margolis: No, your Honor. I think if there were in evidence a set of minutes in which it showed that so-and-so had been elected as president to serve for the term of one year, then I think that there would be a showing, but where it merely shows that there is an election, and no showing of any term or period for which the officer was elected, I think there is no showing.

The Court: Well, of course these must be read in connection with the subsequent minutes which

were introduced as to that. That goes to their evidentiary value and not, I think, to their admissibility.

This document, the general objections to it are overruled, and it seems to me that all of the document except this portion over here on the last page about chairman of the entertainment committee, and the Fish and Game, and so forth, ought to go in. It seems to me this document ought to go in in its entirety except the last page, which is excluded in its entirety but for the signature of H. A. McKittrick, and that will be the order of the court. 402 will be admitted except the last page, and the signature there is admitted. [2088]

\* \* \*

Mr. Rubin: As to Government's Exhibits 24 and 25 for identification, being the fish weights of the Los Angeles-Seattle Motor Express——

\* \* \*

Mr. Margolis: No. I just wanted to state, your Honor, that we have had an opportunity to examine the records and we have no objections as to lack of foundation with regard to these particular documents.

There is an understanding between ourselves and counsel that when we put on our case we will be permitted to put on certain other compilations—I say permitted to put in—there will be no objection to lack of foundation as to certain other compilations taken from the same books subject, of course, to the right of the Government to check the accuracy of those compilations.

\* \* \*

Mr. Rubin: I have reference now to Exhibits Nos. 42, 43, 44 and 45, being the membership application cards of the various units, which your Honor also reserved ruling on.

\* \* \*

With the exception of Mr. Sherman, these are all subject to the stipulation heretofore entered into between counsel for the rest of the defendants.

The Court: Some of these appear to be pretty remote, counsel. Here are some cards in 1943. San Pedro Local No. 33; it appears to be a different union. [2090]

Mr. Rubin: They may have used other application cards at that time.

Mr. Andersen: 33 is a different local union, your Honor.

The Court: There are a number of them here.

Mr. Rubin: These were all produced by the defendant Local 36. There will be subsequent to this offer, if your Honor please, an offer of the ledgers of the various units.

The Court: Are these ledgers?

Mr. Rubin: Those are application cards to which ledger sheets are attached. Of course the purpose of the exhibit is to show the nature of the organization under our theory that they are self-employed individuals who in great part are members of the organization.

The Court: That is the purpose of it?

Mr. Rubin: Yes, your Honor.

The Court: I notice here some of them have "permit number," "no initiation fee," "permit,"

“permit,” “book,” “card.” Now in view of the testimony concerning permits to fish being issued by the union during the period of the strike, is this offered for that purpose?

Mr. Rubin: No, your Honor; it is not.

The Court: These are offered solely for the purpose of showing——

Mr. Rubin: The nature of the organization.

The Court: ——nature of the [2091] organization?

Mr. Rubin: That is correct, your Honor.

The Court: I see.

Mr. Rubin: And in that connection we at this time further offer——

The Court: That is, 42, 43, 44 and 45?

Mr. Rubin: That is correct.

Mr. Garret: Same objections, your Honor.

Mr. Margolis: We object to them as irrelevant and immaterial.

The Court: Same objections you have advanced before?

Mr. Margolis: Yes.

The Court: The objections of the defendant Sherman as to foundation is sustained; all other objections are overruled.

Mr. Rubin: If your Honor please, with respect to the defendant Sherman in this connection, the San Diego cards, Exhibit No. 45, have been identified by Mr. Agliano as being the documents produced from that unit.

Mr. Garrett: There is no connection with him shown for his name is not in the exhibit.

The Court: I do not think there is sufficient connection there.

(The documents referred to were received in evidence and marked Governments Exhibits Nos. 43, 44 and 45 respectively.) [2092]

Mr. Rubin: Now with respect to Government's Exhibits 42-A, 42-B, 43-A, 43-B, 44-A, 44-B and 45-A for identification, we offer those into evidence as being the membership ledgers of the various units of the defendant Local 36.

\* \* \*

The Court: They are for the same purpose?

Mr. Rubin: Yes, your Honor.

The Court: All right. I suppose the same objections are advanced?

Mr. Garrett: Same objection, your Honor.

Mr. Margolis: Same objection.

The Court: Same ruling.

(The documents referred to were received in evidence and marked Exhibits Nos. 42-A, 42-B, 43-A, 43-B, 44-A, 44-B and 45-A respectively.)

Mr. Rubin: We herewith offer Government's Exhibit 46 for identification, which consists of the membership ledger cards and membership application cards of the Redondo unit.

I might state, if your Honor please, inadvertently those books were just produced to the government a day or two ago and that is the reason they are not included in the list.

The Court: Are they offered for the same purpose?



Mr. Rubin: They are offered for the same purpose, your Honor. [2093]

The Court: Same objections?

Mr. Margolis: Yes.

It is understood that although it does not state so in the stipulation that the stipulation is subject to those objections?

Mr. Rubin: Yes.

Mr. Garrett: Same objection, your Honor.

The Court: I haven't seen any stipulation yet.

Mr. Margolis: I am sorry. I thought counsel had submitted it.

(The document referred to was received in evidence and marked Government's Exhibit No. 46.)

Mr. Rubin: If your Honor please, we offer a stipulation covering the exhibits just admitted, being numbered 42, 43-A, 42-B, 43, 43-A, 43-B, 44, 44-A, 44-B, 45, 45-A and 46.

\* \* \*

Mr. Rubin: And we herewith present the stipulation to your Honor for your Honor's perusal and approval.

(The document referred to was passed to the Court.)

Mr. Margolis: With respect to that stipulation, your Honor, we make the statement that we signed the stipulation with the understanding that it was subject to the usual objections as to materiality and relevancy. [2094]

Mr. Rubin: And not as to authenticity or foundation.

The Court: Very well. The stipulation will be approved and filed.

\* \* \*

Mr. Rubin: With respect to paragraph 4 of the stipulation, your Honor please, we may present such summaries before the government rests its case, but we reserve the right in any event to present them after with the same force and effect as though we had presented them during the government's case.

Mr. Margolis: That is agreeable. [2095]

\* \* \*

(The jury returned to the courtroom at 11:30 o'clock a.m.)

\* \* \*

Mr. Rubin: At this time, if your Honor please, the government desires to offer Government's Exhibits 24 and 25 heretofore marked for identification into evidence.

Mr. Margolis: Your Honor please, in connection with those documents, we have had an opportunity to examine the books and we have reached an understanding with counsel that when we present our case we will also have certain summaries to offer, as to which there will be no objection as to the foundation, subject of course to the right of the government to check and subject to objections that the government may have as to materiality and relevancy.

The Court: Your accountant has examined the books from which these records have been compiled?

Mr. Margolis: Yes, your Honor. [2096]

\* \* \*

The Court: The objection of the defendant Sherman is overruled. No. 24 and 25, 24 being a compilation of fish weights of the—what is the name of that?

Mr. Rubin: West Coast Fast Freight is one and Los Angeles-Seattle Motor Express is the other.

The Court: And likewise 25, being compilations of those figures, are admitted in evidence.

Mr. Rubin: Now, if your Honor please, at this time we offer as a group such documents marked for identification as were offered on last Friday before your Honor. Do you desire me to read the specific numbers or might they be received as such?

The Court: I think perhaps we had better make a statement as to all of the numbers, including those offered this morning, and then counsel can object on the grounds stated from out of the presence of the jury.

Mr. Margolis: I thought those documents were already admitted. [2097]

The Court: They haven't been admitted in the presence of the jury. Is there any objection, if he wishes to go ahead and read them as admitted?

Mr. Margolis: We don't want to waive the objections which we made, your Honor, but we see no necessity of going through the whole procedure again and taking up time. We certainly will not

object on the ground that we don't go through the procedure that we followed already.

Mr. Rubin: As I understand, the record will show, if your Honor please, that it will be deemed that the offer heretofore made on Friday will be deemed to be made in the presence of the jury and your Honor's ruling the same as if in the presence of the jury. Is that satisfactory?

Mr. Margolis: We will so stipulate.

Mr. Garrett: So stipulated.

The Court: Very well. That will be the order of the Court.

The long and short of it, so that the jury will not be confused about the matter, the government had a long series of exhibits and the defendants stipulated with the government that they need not lay any foundation concerning the documents, that is to say, have somebody testify that they were present and saw somebody write something on a piece of paper on such and such a day. On Friday I heard the other objections [2098] which the defendants had to offer concerning the documents and have ruled on them and have admitted them in evidence. This morning I heard further objections to further documents and have ruled on them and admitted them into evidence.

The documents which the government counsel is now about to read——

Mr. Rubin: After the next witness.

The Court: After the next witness—well, there is a long series of them, but he will indicate them

to you—are not admitted as against the defendant Sherman. They are admitted as against all other defendants but not as against the defendant Sherman. [2099]

Mr. Kenny: Your Honor, would you mind adding that all of these documents are not presented in their entirety? Some of them are and some the government is only offering a portion.

The Court: All right. The documents are various things. They are principally minutes of meetings. The government offered in some instances the minutes of the entire meeting, in other instances they offered only portions of the minutes of meetings which they deem material, and I have ruled on them; so that counsel will indicate as he reads the document to the jury whether or not it is the entire minutes of the meeting, or only a portion of the minutes of the meeting. In other words, I overruled the defendants' objection concerning the portions not admitted, and have admitted only those portions on the ground that they are material, and the government has the right to limit the cross examination and limit their materiality, but admitted them thusly without prejudice to the right of the defendants if they desire to introduce the rest of those minutes when their time comes either now or later.

Mr. Rubin: Call Mr. Kovacevich. [2100]

## DINKO KOVACEVICH

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

\* \* \*

## Direct Examination

By Mr. Rubin:

Q. Mr. Kovacevich, what is your business or occupation, sir? A. I am a fish dealer.

Q. What is the name of your company?

A. Star Fisheries of San Diego.

Q. Where are you located?

A. 955 Harbor Drive, San Diego.

Q. What is your connection with that business?

A. I am copartner, co-owner.

Q. Who is your other partner?

A. Vincent Petrasich and Sam Berch.

Q. Were you co-owner of that business during 1946? A. Yes, I was.

Q. What are your duties in the office of the business?

A. I don't have any specific duties in the office of the business, but generally all the matters pertaining to the [2101] office I take care of.

Q. I call your attention to Government's Exhibit No. 47, for identification, and ask you if you have ever seen that document before.

A. Yes, I have.

The Court: 47?

Mr. Rubin: Yes, your Honor. That is the next in sequence.



(Testimony of Dinko Kovacevich)

The Court: All right.

Q. (By Mr. Rubin): Was that document ever in your possession? A. Yes, it was.

Q. How did it come into your possession?

A. By mail.

Q. Do you recall whether there was any enclosure with that document?

A. Yes, it was.

Q. I show you Government's Exhibit No. 3 in evidence, and ask you if you recognize not that document but the material that is contained in the document.

A. Yes, I would recognize this as enclosed with this letter.

Q. That is, a copy of Exhibit No. 3 was an enclosure to Government's Exhibit No. 47?

A. That's right. [2102]

Q. And you received that in the mail at San Diego, is that correct. A. Yes, I did.

Mr. Rubin: No further questions.

The Court: Cross-examine.

Mr. Rubin: At this time, if your Honor please, we desire to introduce Government's Exhibit No. 47 into evidence.

\* \* \*

The Court: The objection is overruled. Admitted in evidence. No. 47.

(The document referred to was received in evidenced and marked Government's Exhibit No. 47.) [2104]

\* \* \*

Mr. Rubin: Ladies and gentlemen of the jury, I am about to read to you either all or portions of certain documents which have now been admitted into evidence in this case, and I will indicate to you those documents which I am reading from only partially and those which I am reading in their entirety.

The Court: Call the exhibit number.

Mr. Rubin: I now read from a portion of Government's Exhibit 411 entitled "Joint Executive Board Meeting."

The Court: You mean you are reading the portion admitted in evidence?

Mr. Rubin: Yes, your Honor.

The Court: All right.

(Whereupon, counsel read from Exhibit No. 411 to the jury.)

Mr. Rubin: I now read a portion of Government's Exhibit 238, the entire exhibit having been admitted into evidence.

(Whereupon, counsel read from Exhibit No. 238 to the jury.)

Mr. Rubin: I now desire to read a portion of Joint [2105] Central Council Meeting IFAWA, Local 36, March 2, 1946, Government's Exhibit No. 230:

"Following members present: Charles Mc-Lauchlan, Chairman; Art Hill—Newport Beach."

I don't believe Mr. Hill has been identified yet in this case, if your Honor please. Mr. Hill, will you stand up?

(The defendant Hill stood up.)

The Court: Yes, he has been identified. [2106]

\* \* \*

I now read Government's Exhibit 231.

(Whereupon counsel read from Exhibit No. 231 to the jury.)

Mr. Rubin: That is a carbon copy of a letter. I read a portion of Government's Exhibit 201:

"Barracuda conference April 18, 1946.

"Members present:" [2107]

\* \* \*

The Court: I do not know that Mr. Kibre has been identified to the jury as yet.

(The defendant Kibre stood.)

The Court: Very well.

Mr. Rubin: Government's Exhibit 202, a portion of which reads as follows: [2109]

\* \* \*

I will now read Government's Exhibit 203, being a carbon copy of a letter, and I will read it in its entirety.

(Whereupon counsel read from Exhibit No. 203 to the jury.)

I will now read all of Government's Exhibit No. 27 in evidence. It is on the letterhead of the International Fishermen & Allied Workers of America.

(Whereupon, counsel read from Exhibit No. 27 to the jury.) [2110]

\* \* \*

Mr. Dixon: May it please the court, and ladies and gentlemen of the jury. I will continue to read from the documents admitted in evidence, and unless otherwise stated the document has been admitted in evidence in its entirety.

Exhibit 508, a carbon copy of a letter addressed to the People's Fish Company, San Diego, California, bearing the typewritten signature of R. J. Morkowski, Business Agent, with the notation "Copies to: Bregante's Fish Company, Star Fish Company, Chesapeake Fish Company, Union Fish Company, San Diego Fish Company." It reads as follows:

(Whereupon counsel read from Exhibit No. 508 to the jury.)

Mr. Dixon: Exhibit 47 on the letterhead of the International Fishermen and Allied Workers of America, bearing at the top on the righthand side the typewritten name Floyd Sherman, with the printed name designation of "President" to [2112] the left, Business Agent R. J. Morkowski, date May 17, 1946. To the Star Fish Company, 955 West Harbor Drive, San Diego, California.

(Whereupon counsel read from Exhibit No. 47 to the jury.)

Mr. Dixon: Partial 301. Regular meeting of the Newport Fishermen, dated May 20, 1946.

\* \* \*

Exhibit 409, undated, San Diego unit Southern California Fishermen, Local 36. [2113]

\* \* \*

In part:

San Pedro minutes, membership meeting, dated May 21, 1946, Local 36.

“Gilbert Zafran, President.

“Harvey E. Spencer, Recording Secretary.

“The meeting opened at 1:30 p. m. by the president.”

Mr. Andersen: What is the number of the exhibit?

Mr. Dixon: 204. [2116]

\* \* \*

Exhibit 205, partial:

Minutes of joint executive meeting, dated May 25, 1946, of Local 36. [2117]

\* \* \*

Partial minutes of the Newport special meeting, Fishermen's Union Local 36, May 27, 1946, Exhibit 302: [2119]

\* \* \* \*

Exhibit 401, Redondo Unit:

(Whereupon counsel read Exhibit 401 to the jury.)

206. Strike committee meeting. May 27, 1946.

(Whereupon counsel read from Exhibit 206 to the jury.)

403. Minutes of special meeting, Santa Monica Unit, Local 36, Tuesday, May 28, 1946.

(Whereupon counsel read Exhibit 403 to the jury.) [2121]

\* \* \*

Mr. Dixon: Reading from Exhibit 303, partial:  
"Minutes special meeting Fishermen's Local 36.  
May 29, 1946. [2122]

\* \* \*

Exhibit 207, San Pedro minutes, strike committee meeting, [2124] date May 30, 1946:

(Whereupon, counsel read from Exhibit No. 207 to the jury.)

The document also contains a list of the boats to be notified.

Exhibit 208, strike committee meeting, San Pedro Unit, Local 36, May 31, 1946, 10:30 a. m.

(Whereupon, counsel read from Exhibit No. 208 to the jury.)

No. 28, a letter on the letterhead of the International Fishermen & Allied Workers of America, San Pedro, Berth 73, May 31, 1946, addressed to Mr. Ray Morkowski and signed by Gilbert Zafran.

(Whereupon, counsel read from Exhibit No. 28 to the jury.) [2125]

211. Strike committee meeting minutes, San Pedro, June 1, 1946, Local 36.

(Whereupon, counsel read from Exhibit No. 211 to the jury.)



Mr. Dixon: 404. Minutes Santa Monica unit. Executive Board meeting, June 1st, 1946.

(Whereupon, counsel read from Exhibit No. 404 to the jury.)

Mr. Dixon: 212, Strike committee meeting, San Pedro, June 2nd, 1946, Local 36.

(Whereupon, counsel read from Exhibit No. 212 to the jury.)

Mr. Dixon: 405. Minutes, Southern California Fishermen, Santa Monica unit, Local 36.

(Whereupon, counsel read from Exhibit No. 405 to the jury.)

Mr. Dixon: 304, partial. Minutes of regular meeting of fishermen union Local 36. June 3, 1946.

\* \* \*

213. San Pedro strike committee meeting, June 3, 1946. Among those present: T. R. Smith, George Knowlton, Otis Sawyer, C. C. Kennison.

(Whereupon, counsel read from Exhibit No. 213 to the jury.)

Mr. Dixon: 406. Minutes Local 36, Santa Monica Unit, dated June 3rd. Strike committee.

(Whereupon, counsel read from Exhibit No. 406 to the jury.)

Mr. Dixon: 503. Telegram addressed to Ray Morowski, signed by Charles McLauchlan, Business Agent, Newport. Dated June 3rd.

(Whereupon, counsel read from Exhibit No. 503 to the jury.)

Mr. Dixon: 214. Strike committee meeting, San Pedro, June 4th, Local 36. Members present among others, Otto Sawyer, F. R. Smith, George Knowlton, C. C. Kennison.

(Whereupon, counsel read from Exhibit No. 214 to the jury.)

Mr. Dixon: 328. Newport minutes, dated June 4, 1946. Strike committee meeting.

(Whereupon, counsel read from Exhibit No. 328 to the jury.) [2129]

Mr. Dixon: Exhibit 215. Strike committee minutes, San Pedro, dated June 5.

(Whereupon, counsel read from Exhibit No. 215 to the jury.)

Mr. Dixon: 216. Minutes San Pedro strike committee meeting, dated June 6th. Among those present: George Knowlton, C. C. Kennison, Otis W. Sawyer, and others.

(Whereupon, counsel read from Exhibit No. 216 to the jury.) [2130]

Mr. Dixon: 310, partial. Minutes of strike committee meeting, Newport, June 6th.

\* \* \*

San Pedro minutes, Exhibit 217, strike committee minutes, June 7. Present among others: George Knowlton, Otis Sawyer, C. Kennison.

(Whereupon, counsel read from Exhibit No. 217 to the jury.)

Mr. Dixon: Exhibit 311. Newport minutes, June 7th.

(Whereupon, counsel read from Exhibit No. 311 to the jury.)

Mr. Dixon: Exhibit 406-A. Minutes special meeting, Santa Monica unit, dated June 7th.

(Whereupon, counsel read from Exhibit No. 406-A to the jury.)

\* \* \*

Mr. Dixon: May it please the court. Exhibit 218. Copy of resolution cast by members of Santa Monica unit, Local No. 36, at a special meeting held at Santa Monica, June 7th. [2131]

(Whereupon, counsel read from Exhibit No. 218 to the jury.)

Mr. Dixon: 219. Strike committee meeting, San Pedro, June 8th. Among those present: George Knowlton, C. C. Kennison, Otis W. Sawyer, and others.

(Whereupon, counsel read from Exhibit No. 219 to the jury.)

Mr. Dixon: 312. Strike Committee minutes, Newport, June 8th.

(Whereupon, counsel read from Exhibit No. 312 to the jury.) [2132]

Mr. Dixon: No. 220, strike committee meeting, San Pedro, June 10, 1946. Among those present: George Knowlton, Otis W. Sawyer, C. C. Kennison, Jeff Kibre.

(Whereupon counsel read Exhibit No. 220 to the jury.)

No. 313, partial.

\* \* \*

No. 224, partial:

"Strike committee meeting, San Pedro, June 12, 1946." [2133]

\* \* \*

No. 225, strike committee meeting, San Pedro, June 13, 1946. Among those present: C. C. Kennison and others.

(Whereupon, counsel read Exhibit 225 to the jury.)

No. 226, partial. Strike committee meeting, San Pedro, June 14, 1946. [2134]

\* \* \*

No. 227, strike committee meeting minutes, San Pedro, June 15, 1946. Among those present: C. Kennison, Gilbert Zafran, Otis Sawyer, George Knowlton and others. [2135]

\* \* \*

No. 228, partial. Strike committee membership minutes, San Pedro, June 15, 1946, Fishermen's Co-op Building. [2136]

\* \* \*

No. 317, minutes of June 20, 1946. Minutes of the Newport Unit, signed by C. Lloyd Munson, secretary. [2141]

\* \* \*

Mr. Rubin: Document No. 307, which is a partial:

“General meeting, Newport Fishermen’s Union Local 36, June 24, 1946. [2142]

\* \* \*

No. 319, which is a partial. It refers to the strike committee meeting of June 26, 1946. [2143]

\* \* \*

Next is 233, partial. Strike committee meeting of San Pedro, dated June 28, 1946. Present, among others, were Otis W. Sawyer, Gilbert Zafran, George Knowlton, C. C. Kennison, Jeff Kibre and F. R. Smith. [2144]

\* \* \*

Next is minutes of the Newport Beach unit, dated June 28, 1946, strike committee meeting. This is document No. 320, a partial: [2145]

\* \* \*

Next is No. 321, which is also a partial, of the strike committee meeting of Newport, June 29th, 1946.

\* \* \*

Next is document No. 322, which is a partial. Strike committee meeting of Newport, June 30, 1946. [2146]

\* \* \*

Next is Government’s Exhibit No. 504, a partial,

and represents minutes of the C.I.O. Local 36, San Diego unit, and part of which reads as follows:

\* \* \*

The next is a carbon copy under Government's Exhibit 209, carbon copy of a letter marked "36" at the top, "Berth 73, San Pedro, California; Gilbert Zafran, July 9, 1946," and addressed to "Dear Brother Hawser."

(Whereupon, counsel read Exhibit No. 209 to the jury.)

Government's Exhibit No. 210 is a carbon copy of the enclosure, signed by Gilbert Zafran, dated July 9, 1946, and addressed to "Santa Barbara dealers."

(Whereupon, counsel read Exhibit No. 210 to the jury.)

Government's Exhibit 236 is a duplicate of the notice that went in through the witness Ross and has been identified by Miss Evanisevich as having been dictated by Mr. Zafran. It will not be necessary to re-read that document.

Mr. Andersen: What is the number?

Mr. Rubin: No. 236.

We now call to the attention of the ladies and gentlemen [2147] of the jury Government's Exhibit 332, which is a memorandum, Memorandum "A" on the letterhead of the International Fishermen & Allied Workers of America, attached to which is a copy of the Southern California Market Fishermen's Master Agreement, the counterpart of which is in evidence as Government's Exhibit No.



3. This one is dated May 28, 1946, and the contract itself is signed by the Commercial Fishermen's Co-operative Association, Inc., by Bruce F. Martin. The memorandum attached thereto is signed by Mr. Martin on behalf of the Commercial Fishermen's Co-operative Association, Inc., and signed on behalf of the International Fishermen & Allied Workers of America by Charles McLauchlan. It is dated May 28, 1946.

Government's Exhibit 333 is the same memorandum "A," and attached to the same form of contract, signed by the Western Cannery Company by W. M. Longmoor, and signed International Fishermen & Allied Workers of America by Charles McLauchlan, Local 36, Treasurer, and also by Harold K. Reichner and Burt D. Lackyard.

Memorandum "A" reads as follows: in both the previous exhibit and this exhibit and the one to follow:

(Whereupon, counsel read from Exhibit No. 333 to the jury.)

Government's Exhibit 334 is the identical contract and Memorandum "A," the contract of which is signed Larry Fisher, [2148] Wholesale Fish, Newport Beach, California; also signed International Fishermen & Allied Workers of America by Charles McLauchlan, Harold K. Reichner and Burt D. Lackyard. The same parties have also executed the price list and memorandum "A," all of which is dated May 28, 1946.

That concludes the documentary evidence, if your Honor please.

There is one additional matter. Your Honor will recall this morning the membership application cards of the union and the ledgers were admitted into evidence for the purpose of showing the nature of the organization. We have extracted from these cards the cards of some of the defendants and we desire, as to those cards, that they be admitted generally, showing what they purport to show on their face.

The Court: Let me see them. Have counsel seen them?

Mr. Margolis: No.

(Exhibiting documents to counsel.) [2149]

The Court: Do you wish to offer these as a whole?

Mr. Rubin: If your Honor please, I think if they are admitted they might be replaced in the exhibits from which they came and bear that number. Simply as to those cards I desire to offer them generally.

The Court: I think these ought to either be left in the files or photostats substituted, and each one ought to take a separate number.

Mr. Rubin: Very well, if your Honor please. Then we will offer them as Government's Exhibits next in order, respectively, commencing with Government's Exhibit No. 48.

The Court: W. B. McComas will be 48; Otis W. Sawyer will be 49; C. Kennison, 50; F. R. Smith, 51; H. A. McKittrick, 52; Arthur Dempsey Hill, Jr., 53; Burt D. Lackyard, 54; Charles McLauchlan, 55; George Knowlton, 56.

(The documents referred to were received in evidence and marked Government's Exhibits Nos. 48, 49, 50, 51, 52, 53, 54, 55 and 56.)

The Court: Next witness?

Mr. Dixon: The Government rests. [2150]

\* \* \*

Los Angeles, California; April 14, 1947; 10:30 o'clock a.m.

\* \* \*

The Court: United States v. Local 36. Usual stipulation?

Mr. Dixon: Yes, your Honor.

Mr. Margolis: Yes, your Honor.

Mr. Andersen: I have an opening statement, your Honor.

The Court: Do you desire to make an opening statement?

Mr. Andersen: Yes, your Honor.

The Court: I should state, I think to the jury, that this is the appropriate time when the defendants will put on their defense. It will be opened by a statement by defense counsel to you ladies and gentlemen of the jury of what they propose to prove. The case proceeds against all defendants originally charged except the defendant Sherman.

(Here followed the opening statement by Mr. Andersen which was reported but not transcribed.)

The Court: Very well. Call your witness.

Mr. Margolis: Our first witness, your Honor, will be Mr. Kibre.

## JEFF KIBRE

called as a witness by and in behalf of the defendants, having been first duly sworn, was examined and testified as follows: [2325]

\* \* \*

## Direct Examination

By Mr. Margolis:

Q. Mr. Kibre, what do you do for a living?

A. I am the secretary-treasurer of the International Fishermen & Allied Workers.

Q. Is that the International organization with which Local 36, one of the defendants in this case, is affiliated? A. It is.

Q. How long have you held that position?

A. I have been secretary-treasurer since February of 1945.

Q. Were you connected with the same organization prior to February 1945?

A. Yes, since the fall of 1940.

Q. And in what capacity or capacities?

A. In the capacity of International representative in charge of the California locals.

Q. Could you tell us briefly what your duties were with the International as an International representative during the period from 1940 until you became secretary-treasurer?

A. The important duties that I had, first of all, was [2326] to attempt to achieve coordinated action on the part of the various locals that we have in the state of California. In that connection, I might point out that we have some seven or eight active

(Testimony of Jeff Kibre.)

locals in the state of California located in all of the fishing ports, and it was one of my functions to see that the locals got together from time to time and discussed mutual problems and worked out a coordinated program to improve the interests of all of our members in the state of California. That was one of my duties.

A second duty, or I might say a series of obligation developed in the course of the war particularly. Those were duties connected with meeting the problems brought about by the war, as the war affected the fishing industry; and in that connection it was my duty to meet with the various Government agencies that had jurisdiction over the fishing industry.

I might point out in this connection that during the period of the war the fishing industry was affected by some 10 or 15 Governmental agencies, including the armed forces, and we had a tremendous problem in that connection with respect to regulations, and it was my duty to meet regularly with the various Government agencies, the Army, the Navy, the Coast Guard, the War Production Board, the Office of the Coordinator of Fisheries, the OPA and various other agencies, and attempt to work out the solution of problems that affected out people and that affected the industry as a [2327] whole.

Q. Excuse me. Did that include also the State Fish and Game Commission?

A. Yes, it did.

Q. Did you also have the problem of assisting the various locals in negotiations?



(Testimony of Jeff Kibre.)

A. Yes, that, of course, was one of my important duties, to assist all of our locals in connection with their negotiations with fish dealers and with fish buyers, particularly canners in these various ports. That was at all times a very important duty.

Q. Did you have any connection with research work in the fishing industry?

A. Yes, a great deal. I might say that shortly after I went to work for the International as representative I did take on added duties in addition to my work as a representative in charge of the California locals. That added responsibility consisted primarily of doing a considerable amount of research work for the International office, particularly in the course of the war, and in that connection it was my duty to read and study various publications dealing with the fishing industry, publications put out by the various fishery agencies in California, Oregon and Washington, and also the numerous number of pamphlets put out by the Fish and Wild Life Service. I had to do a great deal of work in that connection, research work. [2328]

Q. Mr. Kibre, you have mentioned that during the war you worked with numerous government agencies as a representative of the International Union. I wonder if you could give us a brief statement of the nature of the problems before those agencies on which you worked.

Mr. Dixon: If the court please, I object to that question as being wholly immaterial.



(Testimony of Jeff Kibre.)

Mr. Margolis: If your Honor please, I might state two purposes for this: First of all, we are going to qualify Mr. Kibre as an expert in this field, and the type of work that he has done is necessary for that qualification, that is, the basis for his qualification. And, second, as your Honor has previously stated, the question of what kind of an organization the Fishermen's Union is is a question of fact to be determined by the jury. If it is a question of fact, then I submit that the only way that the jury can determine what the organization is is by what it has done. That is what determines what the organization is, and we propose to show the kind of activities in which the organization has engaged, so that the jury can determine what kind of an organization this is. I think it is the only way we can show, in addition, of course, to introducing the Constitution, and so forth, which will also bear upon the same question.

The Court: From counsel's opening statement he indicated that you expected to prove to the jury that this was either a [2329] labor organization or that it was a co-operative Fishermen's organization. I don't know, as I have indicated before, what particular difference that would make, except as to whether or not it is a Fishermen's co-operative. Your question—I don't see how that is immediately or particularly addressed to that problem.

Mr. Margolis: If your Honor please——

The Court: And how it would illuminate the jury, no matter what the witness' answer might be.

(Testimony of Jeff Kibre.)

The field has limit, and perhaps I can better tell by the response of this witness to this question and perhaps some other preliminary questions. In other words, I will reserve my ruling on the whole line of questioning at this time until I see what develops.

Mr. Margolis: If your Honor please, I want to also direct your Honor's attention to the fact that I want to get into evidence this witness' experience in connection with dealing with problems of this kind, in order to qualify him as an expert on these matters.

The Court: As an expert with relation to what phase?

Mr. Margolis: With relation to the economic problems, with relation to general fishing problems in the fishing industry, your Honor, as a member of the Fish and Game Commission might be an expert on that subject, or as a person working for some other government agency. I propose to show [2330] he worked with these government agencies on these various problems in such a manner as to qualify him as an expert, just as if he had been a member of one of those groups.

The Court: You proceed with a few of your questions and answers and I will try and determine from them the tack which will be taken by the testimony, and from that the latitude which will be allowed.

Will you read the question?

(Testimony of Jeff Kibre.)

(The question referred to was read by the reporter as follows:

“Q. Mr. Kibre, you have mentioned that during the war you worked with numerous government agencies as a representative of the International Union. I wonder if you could give us a brief statement of the nature of the problems before those agencies on which you worked.”)

The Witness: Yes. The foremost problem was precisely the problem of co-ordinating the various agencies affecting the fishing industry. In that connection the Department of the Interior set up what was called the Office of Co-ordinator of Fisheries, and throughout the war I served as an advisor to the Department of the Interior in connection with the work performed by the Office of Co-ordinator of Fisheries. It was my function as an advisor and as a participant in the work performed by the Co-ordinator of Fisheries primarily to organize production programs along the West Coast, and particularly in [2331] the State of California, to help bring about a solution of the various problems affecting production, let us say, in the sardine industry, to undertake a program to improve the amount of production, to improve the production by the other fishing fleets in Southern California. The main work consisted of a production agency.

Q. Had the war created a number of problems in regard to production?

(Testimony of Jeff Kibre.)

A. Yes. There was the problem—one of the basic problems we faced was that a large number of the vessels were taken over by the Navy, and it was therefore necessary to get maximum production with a 50 per cent normal fleet. In other words, to make an ordinary fishing boat be twice as productive as it had been prior to the war. That was one of the jobs that we faced. Another job that we faced was the problem of Naval and Coast Guard regulations, which seriously hampered the movement of the fishing vessels. For example, there were large areas that were restricted to the fishing fleet for reasons of security, and it was our problem to work with the naval forces, the district commanders, and even the Secretary of Navy in Washington to attempt to reduce the extent of these restricted areas, and also to work out convoy systems whereby our fleet could fish in those areas. [2332]

Q. In order to help solve those problems, did you have to become familiar with such problems as where fish is to be found and the problems of catching and bringing in that fish?

A. Yes, very definitely. I had to become familiar with the fishing areas, the type of fish caught, the type of gear, where the fish is caught, how it is brought in, and so on.

Q. Did you also have to become familiar with all of the fish and game regulations and laws relating to these problems?

A. Very definitely. In fact, I met regularly with the Fish and Game Commission for a period of some three or four years.

(Testimony of Jeff Kibre.)

Q. Did you serve on these various committees, and particularly as an adviser to the Department of the Interior, simply in your individual capacity or as a representative of the International Union?

A. I served as a representative of the International Union.

Q. You became secretary-treasurer in 1943, did you say?

A. 1945; February of 1945.

Q. Now were your duties at that time as an officer of the International changed, and if so in what way?

A. Yes. They were changed in the sense that it was now my main obligation to perform the administrative work for the International Union, such as keeping the records, protecting [2333] the finances and setting up books and keeping the books, and the normal administrative work that is necessary for the operation of a large organization extending over a large area.

In addition to that administrative work, I also had to do a considerable amount of field work, such as I had done previously, that is, getting out in the field and assisting the local organizations in the solution of their problems.

Q. Did you continue doing most of the work that you had done as an International representative after you became secretary-treasurer?

A. Yes.

Q. Now in both your offices as International representative and as secretary-treasurer of this union,



(Testimony of Jeff Kibre.)

was it required for you to, and did you travel to, the various ports on the Pacific Coast?      A. Yes.

Q. And became acquainted with the problems in the different ports?

A. Yes. I practically lived in a Pullman car or in a plane for the last two years particularly. It has been my duty to travel regularly and extensively up and down the entire West Coast, to visit all of the fishing ports, and in addition to that in the past year and a half to travel into the Gulf to cover the entire Gulf area—that is, the Gulf [2334] of Mexico—and along the East Coast as well.

Q. In the course of your duties and your studies in the fishing industry, particularly here on the West Coast, have you become familiar with the history of the organization of fishermen on the Pacific Coast?

A. Yes, very definitely.

Q. What is the first record that exists of the organization of fishermen on the Pacific Coast.

Mr. Dixon: If the Court please, I now rise to object to this line of testimony which, as far as the defendants who are on trial is concerned, we regard as wholly immaterial.

The Court: I think it is, counsel. Objection sustained.

Mr. Margolis: Your Honor, I would like—this is so basic, your Honor, and I think I can point out to your Honor authorities which support our position—I would like the opportunity to argue this matter.



(Testimony of Jeff Kibre.)

I think the whole question of how we present our case is involved here, and I would respectfully request such an opportunity.

\* \* \*

(Whereupon, at 11:45 o'clock a.m., the jury retired from the court room.) [2335]

\*\* \* \*

The Court: Come back at 1:20. I followed Mr. Andersen's opening statement and it seemed to me that there was considerable that he mentioned in his opening statement that might have very doubtful materiality to the case and other grounds of inadmissibility, such as the history of the union. In other word, what I am thinking about is this, this is not like a murder case where you come in and justify killing somebody, and the only confession and avoidance that you can have in this kind of a case, it would seem to me, would be limited to the fact to be determined by the jury whether or not you did or did not conspire, whether or not you are or are not under the Fishermen's Marketing Act, whether or not if you did or did not conspire that the purpose and object of the conspiracy was to restrain the flow of fresh fish into this community so as to affect and burden the commerce in fresh fish. In other words, to destroy the competitive production of fish to the consumer.

Mr. Dixon: Pardon me, your Honor. I was just going to suggest, your Honor, with reference to that latter point—and I might say that we perhaps can save considerable amount [2336] of time by at this

particular phase of the defense coming to grips with many of the questions which may be presented by the type of testimony which Mr. Andersen indicated he would probably endeavor to bring into the defense of this case.

The Court: Yes, I think that if we are going to have an argument on the question we might just as well discuss generally the admissibility of these various things, and this is a good key to it, this unanswered question.

Mr. Margolis: So that your Honor may be thinking, and so that counsel may know what we have in mind, in addition to the matters which your Honor has mentioned we intend of course to rely upon the rule of reason. I think your Honor will find that the cases are very broad as to the type of evidence that will be considered, the history, and so forth, the economic conditions of the industry, and whether or not the rule of reason applies here is, I might say, a question of fact to be determined by the jury.

In any event, I am just pointing that out.

The Court: Of course the rule of reason is difficult to define, as to just what is meant by the rule of reason.

Mr. Margolis: That is right, your Honor.

The Court: It took a lot of pages trying to define it originally and they have been talking about it ever since and saying it was a bad rule.

Mr. Margolis: Precisely because it is difficult to [2337] define, your Honor, it is difficult to define the outer limits of testimony which is admissi-

ble, particularly with regard to the rule of reason, and we certainly intend to go into that.

The Court: Very well. We will recess until 1:30. [2338]

\* \* \*

The Court: I think I will have to sustain the objection. I read very carefully the cases which you cited on which you principally depended, the Board of Trade case and the Appalachian case, and the case upon which the government relies, the Socony Vacuum case, and the Socony Vacuum case itself distinguishes the two previous cases. But I did not depend upon the distinction pointed out in the Socony Vacuum case.

As to the Chicago Board of Trade v. United States, the Socony Vacuum case points out that no attempt was made to show that the purpose or the effect of the rule—that is, the rule that they claim was monopolistic—was to raise or depress prices. The rule affected only a small proportion of the commerce in question, and among its effects was the creation of a public market, and so forth. Since it was not aimed [2343] at price manipulation, or the control of market prices, and since it had no appreciable effect on market prices the rule survived as a reasonable restraint of trade.

This is a price case, there isn't any denying that, and I think the defendants concede it.

Mr. Margolis: We would like the opportunity to prove in this case precisely what the court found to be the fact in that case, and we think we should have the opportunity to prove it as a defense, and

that at this point, following the government's presentation of the case, it simply cannot be said that this contract which was attempted to be obtained would have a substantial effect upon prices.

The Court: That is only one of the things. It was not aimed at price manipulation or the control of market prices.

Mr. Margolis: We want to prove the same here, your Honor; it is not aimed at market manipulation or the control of market prices.

**We want the opportunity** to prove that, that it was aimed at something entirely different.

The Court: What?

Mr. Margolis: That it was aimed at getting a decent return for the fishermen——

The Court: By the control of prices. [2343]

Mr. Margolis: If I may finish. ——but not to determine market prices.

The point is that the market prices referred to in the Socony Vacuum case are the prices to the consumer. That is how they distinguish the other cases. There is no attempt here to regulate the prices to the consumer.

The Court: In the Socony Vacuum case they went to the source of supply and bought the distressed gasoline from what is referred to in the oil business as the pots.

Mr. Margolis: But the combination went all the way up to the consumer and the ultimate effect was on the price to the consumer. We want the opportunity to show here there is no ultimate effect on the price to the consumer. As a matter of fact,

they distinguished in the Socony Vacuum case, your Honor—the court said in the Appalachian case there was no showing there was any effect on the price to the consumer. In this case we want the opportunity to show the same thing. I don't think that there can be any assumption here that there is an effect upon the price to the consumer. As a matter of fact, there has been no showing of that kind.

The Court: The court in the Socony Vacuum case also distinguished the Appalachian case, on page 215, volume 310—214 and 215. “And it observed”—that is to say, the court in the Appalachian case—“that the plan did not either contemplate or involve ‘the fixing of market prices’; that [2344] defendants would not be able to fix the price of coal in the consuming markets; that their coal would continue to be subject to ‘active competition’.”

Mr. Margolis: Your honor, the words that are important there are the words “in the consuming market.” Now I do not think——

The Court: Well, the consuming market, I am afraid in connection with any commodity that goes into trade, the consuming market begins where it first enters the channel of commerce. There is no distinction between the consuming market when you buy it and eat it; the consuming market is the flow of trade.

Mr. Margolis: Then I don't know why they use the words “consuming market.” They would have said “in the market” and the word “consuming” just doesn't mean anything, your Honor. The word



"consuming" was just thrown in there. They might have said "in all markets" but they said "consuming market." I don't think that the dealers consume fish. They trade in fish; they don't consume it. I think that that is putting an interpretation upon the word "consuming" which either makes it meaningless or which gives it exactly the opposite meaning which the word "consume" has. The dealer does not consume fish, except a small amount perhaps.

The Court: I am sorry but I cannot agree with you. I thought very seriously about the matter, in fact, I thought so seriously about it that I got up at 12:00 o'clock and read books until 3:00 o'clock this morning.

Now in the Socony-Vacuum case they also point out that in the Trenton Pottery cases, which appears to be the first time where the Court sustained a conviction under the Sherman Act and stated that the reasonableness of the prices or the good intentions of the combining units should not be taken into consideration. The Court in the Socony-Vacuum case repeats that, not only quotes it with approval but it repeats it at page 222:

"It has no more allowed genuine or fancied competitive abuses as a legal justification for such schemes than it has the good intentions of the members of the combination."

On page 210 of the Socony-Vacuum case it says:

"The court stated (that is, the trial court) that where the members of a combination had



the power to raise prices and acted together for that purpose, the combination was illegal; and that it was immaterial how reasonable or unreasonable those prices were or to what extent they had been affected by the combination."

And it goes on and repeatedly says language to the same effect.

And in this case specifically the point was raised in the Supreme Court that certain evidence which was offered should have been admitted as bearing on the purpose and end sought to be attained, the evil believed to exist and the [2347] nature of it, and the Court sustained the lower court in excluding that evidence. And in the argument to the Supreme Court the appellants specifically relied upon *Board of Trade v. United States* and the quotation which you gave to me, Mr. Margolis. They quote that in their brief to the court and it is quoted here in this volume.

Mr. Margolis: With relation to an entirely different set of facts than we have here, your Honor. That is the point.

The Court: As you stated yesterday, every set of facts is different, and the only value of precedent is the analogy. If we could take that literally and rely upon it that every set of facts was different, the law would have to be new for every case and we could not have any rules to guide us. All we can do is take the analogies and, as I see it, the analogies present in this case, the accusation is that they combined for the purpose of fixing prices and to affect the flow of fresh fish in other than a competitive manner.

Here they combined, in the Socony-Vacuum case, to restrain the quantity, that is, they combined to maintain the price, but one of the things they did was to restrain the quantity of gasoline which would come on the market which would destroy or affect the price.

I think it is almost needless for me to continue to quote. I have marked the book up here and it is marked up [2348] on every page from 210 to 224.

On page 228, in connection with the respondents' offer of proof which they made in the Socony-Vacuum case, the Court says:

"The offers of proof covering the background and operation of the National Industrial Recovery Act and the Petroleum Code, the condition of the oil industry, the alleged encouragement, cooperation and acquiescence of the Federal Petroleum Administration in the buying programs and the like were properly excluded, in so far as they bore on the nature of the restraint and the purpose or end sought to be attained. For as we have seen the reasonableness of the restraint was not properly an issue in the case."

They go on further in that connection:

"To the extent that they were designed to show that respondents by their buying programs had not raised the spot market prices to an artificial and non-competitive level, these offers of proof were properly denied as immaterial. For, as

we have said, the reasonableness of the price and the fact that respondents' activities merely removed from the market the depressive effect of distress gasoline were not relevant to the issues." [2349]

That is only among other things that are not relevant.

"And to the extent that these offers of proof were aimed at establishing and evaluating other contributory causes for the price rise and market stability during the indictment period, they were not improperly denied."

However, on page 230 of the Socony-Vacuum case I think the Court does set a pattern for the admissibility of a certain type of evidence. That was the type of evidence and the plan which I tried to follow in connection with the offers of proof made in the government's case and the admission of evidence by the government and the exclusion of other evidence.

The Court goes along about prolonging the inquiry, that Mr. Justice Holmes' one objection to the introduction of collateral issues is a "purely practical one, a concession to the shortness of life." And then it goes on:

"Similar reasons sustain the action of the trial court in limiting the inquiry into general economic conditions antedating and during the indictment period."

So I think that general conditions concerning the fish industry antedating the indictment period and during that time, that is, a reasonable time prior to the indictment period, are admissible. But I do not think that evidence which goes to the reasonableness or unreasonableness of the defendants' [2350] conduct, reasonableness or unreasonableness of the price, is to be admitted.

There is one other quotation that I had here a while ago. In the *Socony-Vacuum* case at page 211 the Supreme Court, in speaking of the reversal of the case by the Circuit Court of Appeals, said:

"The Circuit Court of Appeals held this charge to be reversible error, since it was based on the theory that such a combination was illegal per se. In its view respondents' activities were not unlawful unless they constituted an unreasonable restraint of trade. Hence, since that issue had not been submitted to the jury and since evidence bearing on it had been excluded, that court reversed and remanded for a new trial so that the character of those activities and their effect on competition could be determined."

And the Supreme Court reversed the Circuit Court, thus holding that that was not a proper view of the law.

Moreover, there are indications in here, as indicated there, that the mere making of a price fixing agreement is per se a violation of the Sherman Law, which would seem to indicate that the government

need go no further to prove a prima facie case, and whether it was reasonable or not is immaterial, and evidence going to that effect is inadmissible. [2351]

However, I have not followed that idea in my rulings on the evidence in the case in chief.

On page 217, in speaking of the Maple Flooring case and the Cement case, the Court said:

“It was noted in those cases that there was not present any agreement for price-fixing. And they were decided, as indicated in the Trenton Potteries case, on the express assumption that any agreement for price-fixing would have been illegal per se.”

On page 219:

“Proof that there was a conspiracy, that its purpose was to raise prices, and that it caused or contributed to a price rise is proof of the actual consumation or execution of a conspiracy under Section 1 of the Sherman Act.”

Then again on page 221, the portion which Mr. Rubin read last night, all goes to the same idea.

Mr. Margolis: Before your Honor finally rules, I want to state our offer on one more point. That one additional point is this, that under the Fishermen's Marketing Act, collective marketing of fish is permitted. I think that it is true that in different types of industries there are different forms of marketing and that the evidence as to traditional forms of marketing fish is competent, historical evidence with regard to the methods of marketing fish is



competent, for the purpose [2352] of showing what kind of marketing is permissible under the Fishermen's Marketing Act.

The Court: By "historical methods of marketing fish," what do you mean?

Mr. Margolis: I mean the types of agreement which fishermen have historically entered into with regard to the sale of their fish. That is what I mean by marketing. Agreements for sale. And I think that the types of agreements which have been in effect for many, many years and which were in effect at the time that this legislation was enacted is admissible for the purpose of showing the type of marketing which is covered by the Fishermen's Marketing Act; if there is a traditional form of marketing in this industry which may be different from marketing in other industries, then I think that it is admissible to show what the traditional form of marketing is.

The Court: I would be inclined to agree with you, but I do not think we ought to go into an encyclopedia discourse here as to the history of catching and marketing fish. I think something that goes to the issues here is all right.

You handed me up a book here, Mr. Dixon.

Mr. Dixon: That is just a government publication on the Marketing Act.

The Court: This is the same one that the defendants have? [2353]

Mr. Dixon: Yes.

The Court: Fisheries Circular No. 22?

Mr. Dixon: That is right.



Mr. Rubin: There is a definition in there on the righthand page as to what a fishery cooperative association is.

Mr. Dixon: Of course, our contention here is, your Honor, that the defendants have shown no evidence whatsoever, and I do not believe they can, that they even come within the Fishermen's Marketing Act.

The Court: If they can, I think they are entitled to present it.

Mr. Dixon: We agree.

The Court: In other words, I do not think I have the right or the power to compel the defendants at this time to decide in their defense whether or not they are going to claim a labor union or a cooperative. In other words, they claim they are not guilty for any and all reasons which might appeal to the jury as being reasonable.

Mr. Margolis: To get back to that point, your Honor, I think we do not intend—let me say in our evidence—by going back to the first incident that we have knowledge of where this type of marketing was carried on, to spend hours on the thing. As a matter of fact, 10 or 15 minutes would cover this whole period of history. We don't intend to go into an encyclopedic discussion of it, but we did intend, [2354] your Honor, to show that there has been established in the United States and on the Pacific Coast a traditional method of marketing fish by fishermen through collective bargaining agreement of the precise kind which the defendants in this case sought to obtain. [2355]

The Court: Now, I don't know whether that would be admissible or not. I don't think that goes to the general economic condition of the industry.

Mr. Margolis: I am not withdrawing our other position, your Honor, but I am now basing our offer on a different ground—on an additional ground, let me say.

The Court: What ground is that?

Mr. Margolis: That ground is in determining what kind of market the Fishermen's Marketing Act has reference to we have to take into consideration the traditional methods of marketing in this industry. The different methods of marketing in one industry may be considered as being appropriate, because they are the traditional methods of marketing in the industry, and when the Fishermen's Marketing Act was passed the purpose was to permit fishermen to act in accordance with the traditional methods.

Mr. Rubin: I know of no such authority, if your Honor please. It seems to me this issue is solely this: what did these defendants do in this particular situation, and how do they function and how do they operate?

There may be a perfectly legitimate Fishermen's cooperative somewhere. No doubt there is. The fact that they function and function successfully is certainly not material to what these defendants do.

The Court: I don't see how that would be, counsel. It [2356] seems to me the actual effect of it would be to say, "Well, all we did was to do what

somebody else did, and they are not being prosecuted, and we are," which is not a defense.

Mr. Margolis: I don't think it is conclusive. My only contention is that in determining what this legislation was intended to cover, the type of marketing it was intended to cover, one thing that can be taken into consideration, one factor—I don't think it is the determining factor—but one factor that can be taken into consideration is the type of marketing that is traditional in this industry. That is one factor to determine what is meant by fishermen collectively marketing.

The Court: What specifically do you propose to prove in that connection?

Mr. Margolis: We propose to prove—I am not making this as an offer of proof, because that would be in more detail, but we propose to prove that at least since—I have forgotten the year, 1886, or whatever the year was, the traditional method of fishermen marketing their catch has been through collective bargaining agreements of the precise type which is involved in this case.

Mr. Rubin: Then you would have to go into every facet of every industry in which that particular contract was made. As counsel knows, the canning industry has an entirely different situation than the fresh fish industry; the big boats [2357] have an entirely different situation than the small boats.

Mr. Margolis: You mean with regard to fishing?

Mr. Rubin: With respect to with whom the contracts are made.

Mr. Margolis: We deny that. The government will have an opportunity to show that, but we deny that that is so, and I submit that counsel standing up and saying that is what we will show isn't proof at all. What we offer to prove, and I think this is the basis upon which the admissibility or non-admissibility must be determined—not upon what counsel says he is going to prove—what we offer to prove is this: the traditional form of marketing in the entire fishing industry, canning and every other aspect of it.

If our proof is not correct, if those are not the facts, then of course the government has the opportunity to disprove the fact, but in determining our offer of proof, we can't do it upon the basis of what counsel says are the facts; it has to be determined as to whether our offer is competent, if it is true.

The Court: I don't think so. I think what you did here—if you offered to prove the traditional method of marketing, then you have to, as Mr. Kibre up to this point has testified that the union covers the whole United States, and you have locals wherever there is a port of any consequence where fish is brought in, you would have to bring in the contracts, and every one of them. I don't think that is a defense. I don't [2358] think it is properly admissible as a defense.

Mr. Margolis: It isn't a question of what is a defense, your Honor; it is a question of what is meant by collective marketing. And in order to determine the meaning of that term in the law——

The Court: No, I don't think so. I think you have to determine here whether it is collective bargaining by what the defendants did and what they wanted to do, what their intention was, which must be determined from the facts and not merely their declarations, and then the jury can decide under appropriate instructions whether they are or are not within and under the ambit of the Fishermen's Marketing Act.

In any event, what do you want to do about making an offer of proof? From what I have said now it ought to be an indication that there are a great many things in Mr. Andersen's opening statement that I would have to sustain an objection to.

Mr. Kenny: I think there are a great many grounds as to the admissibility of this that Mr. Margolis did not touch upon.

Assuming your Honor is correct that the government makes out a prima facie case and they show the agreement was one to reduce competition, and by reducing competition fix prices, at least then it is a matter of defense to show, (1) either—this refers to what Mr. Margolis has been touching upon—marketing methods, and (2) this is a bona fide union. [2359]

I want to read one paragraph. Mr. William Leiserson spoke out at U.C.L.A. at that conference, and there was one paragraph in his speech that was very impressive to me, and I had it copied this morning. This goes to the matter of defense. It is assuming



the government can make a prima facie case, then there are these certain exceptions. This is what Mr. Leiserson says:

“But not only labor unions, farmers’ organizations, too, are exempted from antitrust laws. Unquestionably unions are combinations to restrict competition among workers, to raise and standardize wages and working conditions through whole industries; and farmers organize to standardize products and raise prices. In fact the Government lends money to combinations of farmers to help them withhold their products until they can get the prices they want. These Government policies with respect to labor and agriculture were established by law to deal with economic and social evils brought on by competition among farmers and workers, just as the antitrust laws were directed against the evils of business monopolies. To say they are special licenses to violate the law and to compel wage earners (or farmers) to compete and underbid each other is to ignore history and the progress that has been made since the combination laws [2360] of Adam Smith’s days.”

What we are attempting here is to show a history not only of the mode of marketing, but of the unionization of this particular industry, and certainly if the government has a prima facie case showing a reduction agreement to reduce competition and price-fixing resulting therefrom, then if the burden does shift to the defense the defense should not be put in a strait-jacket and prevented from showing how come they got to be a union, how



come they got to market in this way, and whether or not they are not within these exemptions that the law has given through the years.

The Court: I think they would be except for the declarations in the various cases that the intentions of the defendants doesn't make any difference. All I can do is follow the law.

Mr. Kenny: This isn't going to intention. This is to tell the jury how come we got that way.

The Court: That is your intention. You did this because, because, because.

Mr. Kenny: If we show we are a labor union, historically rising as a labor union, or that we are marketing in the way contemplated by the Act, then the jury should know it.

This is a quotation from the Board of Trade case:

"This is not because a good intention will save an otherwise objectionable regulation, or the reverse, [2361] but because the knowledge of intent may help the court to interpret facts."

It seems to me Mr. Leiserson states the thing more briefly—

The Court: The Supreme Court says of the Board of Trade case that doesn't apply in a price-fixing case. That is the way I read the *Socony Vacuum* case. I may be wrong in it, but that is my conclusion on it after giving it some considerable study, and I have already ruled that a labor union by virtue of its being a labor union is not per se exempt. That is to say, that a labor union can be a labor union and still violate the antitrust laws, can conspire to violate the antitrust laws.

Mr. Kenny: Only vertically. When it leaves its essential position as a horizontal association of workers.

The Court: That becomes a question of fact.

Mr. Kenny: That is what we are trying to show to the jury.

The Court: Whether or not that is a conspiracy.

I wouldn't want to limit the law to that statement.

Mr. Rubin: And where there is a labor dispute, if your Honor please, they may have certain privileges.

Mr. Kenny: That is one of the things we intend to show here, that this is a labor dispute.

The Court: The Supreme Court has said the same thing [2362] isn't in the Hinton cases.

The only difficulty is if these cases weren't there you might be able to persuade me, but I have got these cases here and I have to follow the law as it is declared there, and as I see it.

Mr. Kenny: At least we should be given the opportunity to show that this is a labor dispute. Just because the Supreme Court in another case might have said that a dispute in that case was not a labor dispute, we have the right to make a record here to show that it was a labor dispute within the contemplation of the Act.

The Court: I don't think so.

Mr. Dixon: May I interrupt and ask him just what kind of evidence, and that gets back to the question I asked Mr. Andersen in his opening statement, he expects to introduce under that theory.

We have no objection to that, we believe it would be competent if they could introduce evidence to show that there was a labor dispute here; but the kind of evidence they are talking about would not be introduced for that purpose or be relevant to determine or help this jury determine whether there was a labor dispute here. The test, as we see it, as to that type of evidence is whether or not the employer-employee relationship exists between the parties, which is the foundation of the whole labor union organization. [2363]

Now, that type of evidence would be competent, in our opinion. But to go beyond that and to go out into broad fields of what the fishing industry does and doesn't do isn't going to help this jury determine that question. And the same would be true with regard to the type of evidence that they wanted to submit to show that they were a co-operative, or operating under the Fishermen's Marketing Act.

The Court: I think all the evidence that goes back to the history of these agreements, if there are agreements made by other labor unions, or other fishermen's organizations up and down the coast, or elsewhere, I don't think that is material here. On the matter as to whether or not it is a labor dispute, I think counsel's statement is correct.

In any event, the objection will be sustained, and we will call the jury down.

Mr. Andersen: Subject to the exceptions you mentioned?

Mr. Margolis: If your Honor please, at this point shall we make an offer of proof to some of the matters we want to prove?

The Court: I think probably that it might be well at this time. On the other hand, I don't think you have got far enough into the defense for me to be able to rule on your various offers of proof.

Mr. Margolis: We don't know where to go, your Honor. If we make an offer of proof, perhaps at some point your Honor [2364] can say, "Well, at that point I will permit you to prove it." Otherwise I am just going to go ahead in the only way I can see to do, go ahead and ask all the questions I was going to ask to see at what point the evidence is going to get in. I am perfectly willing to do that, but this is the only way I see of doing it so as to make my record for an offer of proof.

The Court: I think I indicated here that the general economic condition of the fishing industry antecedent to the time of the strike—of course, that was during the war, but I think the jury will probably take that into consideration—and perhaps before the war, is proper. But your questions indicated—and maybe I got thrown a little bit by the opening statement of Mr. Andersen, I keep going back in my mind that we are going to have to sit here and listen to the fishing industry back in 1884.

Mr. Margolis: We could have had Mr. Kibre off the stand by this time and it doesn't seem to me that the question of time is really the question here. If it would take a long time for us to put the evidence in, and if the evidence is material, the fact

that it would take a long time wouldn't make any difference. But the fact is it won't take us a long time. Of course, these discussions take a long time.

The Court: Whether it takes a long time or not, if you are entitled to put the evidence on you are entitled to put it [2365] on, because this is your day in court, and whatever length of time it takes, it will take.

I think I would prefer to probably go ahead a while in the matter of questions and answers and see what develops.

Call the jury down.

(The following proceedings were had in the presence of the jury.)

The Court: The stipulation with the usual exceptions?

Mr. Kenny: Yes, your Honor.

Mr. Rubin: So stipulated, your Honor.

The Court: Very well.

---

### JEFF KIBRE

called as a witness by and on behalf of the defendants, having been previously sworn, resumed the stand and testified further as follows:

The Court: Read the pending question before the jury went out.

(The question referred to was read by the reporter as follows:

“Q. What is the first record that exists of the organization of fishermen on the Pacific Coast?”)



(Testimony of Jeff Kibre.)

The Court: The objection is sustained.

Mr. Margolis: If your Honor please, I have some documents here that I would like to have marked for identification.

The Court: Very well. [2366]

Mr. Margolis: There are two documents on the letterhead of the Columbia River Fishermen's Protective Union, which are stapled together.

The Court: Do you want them separately marked?

Mr. Margolis: I think they can be marked as one and two of the same exhibit.

The Clerk: H is the next number.

The Court: H-1 and -2.

Mr. Margolis: There is also a receipt of the same union, and I ask that the documents be marked, the two letters H-1 and -2, and the receipt H-3, your Honor, for identification.

The Court: Very well. Has the government seen it?

Mr. Margolis: No. I am going to show it to them.

(The documents were passed to government counsel.)

The Clerk: I have to make a correction in that numbering, your Honor. The next in order will be I-1, -2 and -3.

(The documents referred to were marked Defendants' Exhibits I-1, I-2 and I-3, for identification.)



(Testimony of Jeff Kibre.)

Direct Examination

(Resumed)

By Mr. Margolis:

Q. Mr. Kibre, I show you three documents which have been marked as Defendants' Exhibits for identification I-1, -2 and -3, and ask you if you are familiar with those documents.

A. I am. [2367]

Q. What are those documents?

A. These are records furnished to us by our Columbia River Fishermen's Protective Union, an affiliate of our organization, furnished approximately a year ago to our office in Seattle.

Q. Were these documents taken from the files of that union?

A. Yes, they were taken from the files of the Columbia River Fishermen's Protective Union by the executive secretary, Henry Niemela. They were taken in response to a request from our affiliates for historical information dealing with collective bargaining on fish prices.

Q. And those are the documents that you received in response to that request, is that right?

A. They are, yes. [2368]

Q. Are you familiar with any of the names of persons mentioned on these documents?

A. Only to the extent that I know that they were at one time members of the Columbia River Fishermen's Protective Union, this particular name here. This is a receipt for that particular fisherman.

(Testimony of Jeff Kibre.)

Q. The name Abramson appearing on the receipt? A. That is right.

Q. Do you recognize this as the old letterhead of the Columbia River Fishermen's Protective Union?

A. That is right. In fact, they still use a letterhead somewhat similar to that.

Mr. Margolis: Your Honor please, at this time we offer in evidence as Defendants' Exhibits I-1, I-2 and I-3 the documents marked for identification with those numbers.

Mr. Dixon: Objection, your Honor, on the ground they are immaterial.

(The documents referred to were passed to the Court.)

The Court: Yes. I think these are immaterial. Objection sustained.

Mr. Margolis: I assume, your Honor, without stating so with regard to each item as to which any objection may be sustained, that the defendants' right to make an offer of proof is reserved?

The Court: That is right. But the objection is sustained [2369] to these on the ground solely that they are immaterial.

Q. (By Mr. Margolis): There is a fishing fleet that fishes out of San Pedro known as the purse seine fleet, is there not? A. That is correct.

Q. What type of a fleet is that?

A. There are large vessels which average in length from about 60 to 100 feet, which use net, gear, for the purpose of catching fish.

(Testimony of Jeff Kibre.)

Q. What does the term "purse seine" mean?

A. The term "purse seine" simply means a large net which is used to encircle a large school of fish, and the bottom portion of the net is pulled together and tightened up to that the fish are imprisoned. It is somewhat like closing the bottom of a purse. Just like a woman's purse is closed at the top and completely encompasses the opening, so the purse seine net is pulled together, or pursed together, and that has come to be known as a purse seine net.

Q. And these boats are boats that fish with purse seine nets, is that right?      A. That is right.

Q. When was the purse seine fleet in San Pedro first organized, to your knowledge?

Mr. Dixon: Object, your Honor, on the ground that it is immaterial. [2370]

The Court: I do not know whether it is immaterial or not. The objection is overruled.

Mr. Dixon: I might say, and I believe counsel for the defendants will agree, that the boats involved here are not purse seine boats.

Mr. Margolis: That is right. The boats involved here are not purse seine boats but they are fishermen and there is a relationship between the purse seine boats. Purse seine boats do bring in some of the market fish. This is what we intend to prove.

The Court: Objection overruled. I do not think, if that is correct, that the materiality or immateriality will appear.

The Witness: The purse seine fishermen at San Pedro began to organize in about 1934.

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): How were they organized at that time?

A. They were organized at that particular time into what was known as the Fishermen and Cannery Workers Industrial Union.

I might say also that particular union, when it was so organized in 1934, did not only include purse seine fishermen, it included all types of fishermen in San Pedro.

Q. It included the small boats which are now organized in Local 36, one of the defendants? [2371]

A. Yes, it did.

The Court: Let me ask you a question. There are two types of fishermen that may be described as purse seine fishermen and fresh fish fishermen?

The Witness: I will tell you, your Honor, the fleet is roughly divided up into what are called large boats and small boats. The dividing line, however, is rather narrow, and the two tend to come together in fact. There are some fresh fish market fishing boats which are actually small purse seine boats. But just for common usage in the industry we tend to speak of the large boats or the purse seine boats and the small boats.

The Court: The small boats being the fresh fish boats generally and the large boats being the purse seine or cannery boats?

The Witness: Well, put it this way: that more of the small boats fish for the fresh markets than the large boats.

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): Would it be correct to say that with all of the large boats, purse seine fleet, the fishing for market fish is incidental?

A. That is right.

Q. Whereas with the small boats, with some of them it is not at all incidental but is their main occupation, is that right? [2372]

A. It is much more important to them, that is, to the small boats than to the large boats.

Q. And the purse seine fleet fish almost exclusively for the canneries, is that right?

A. That is right.

Q. Does the small boat fleet also fish for the canneries?

A. Oh, yes, they fish very extensively for the canners in Southern California.

Q. Has that been true at all times that you have knowledge of the existence of small boats?

A. Yes. In fact, in the early days, in the 20's, practically all of the cannery fish was caught by the small boats.

\* \* \*

Q. Even today the small boat fleet does fish for the canneries?

A. Yes, definitely.

\* \* \*

Q. Had you stated the name of the union to which both types of boats were organized in 1934?

A. Yes. It was the Fishermen and Cannery Workers Industrial Union at that time. Its name was subsequently changed.

(Testimony of Jeff Kibre.)

Q. To what?

A. To the Deep Sea and Purse Seine Fishermen's Union.

Q. Now at the time that this particular organization was formed, were any steps taken by this organization to obtain a contract for its members?

A. Yes.

Q. What steps were taken? Will you tell us?

Mr. Dixon: May I ask this witness one or two questions, your Honor? [2374]

The Court: On voir dire?

Mr. Dixon: Yes, your Honor. I perhaps can do it with one question, your Honor.

Mr. Kenny: No objection?

The Court: You haven't any objection?

Mr. Kenny: No.

The Court: Very well.

### Voir Dire Examination

By Mr. Dixon:

Q. Mr. Kibre, are you personally acquainted of your own knowledge concerning these contract negotiations that you are about to testify to in 1934?

A. You mean am I acquainted——

Q. Personally acquainted of your own personal knowledge with the facts that you are about to testify to concerning these so-called contract negotiations in 1934?

A. I am acquainted of my own knowledge from the standpoint that the original organizer of the union in San Pedro is still present and is still an officer of the union, and from him——



(Testimony of Jeff Kibre.)

Q. That is not my question, Mr. Kibre. Did you participate in these negotiations?

A. No, I did not.

Q. Were you associated in any way with the Fishermen and Cannery Workers Union in 1934?

A. As a matter of fact, I didn't become associated with the union until 1940.

Mr. Dixon: That is what I understood.

I think, your Honor, that this witness is not competent to answer the question.

The Court: Let me hear the main question again.

(The record referred to was read by the reporter as set forth above.)

The Court: Do you want to ask some more questions?

Mr. Margolis: I will withdraw that question for the moment.

### Direct Examination

(Continued)

By Mr. Margolis:

Q. In connection with the various activities in which you have engaged, that you have previously testified about, have you made a study of the entire history through its files and through various recorded decisions of the union?      A. Yes.

Mr. Dixon: Objected to, your Honor. That is wholly immaterial as far as this witness is concerned. If the testimony that is endeavored to be

(Testimony of Jeff Kibre.)

elicited from this witness were competent, clearly the records of the association, if any, would be the best evidence.

The Court: Yes, I think the records would be the best evidence, if it is admissible. [2376]

What was your present pending question, or is there any?

Mr. Margolis: There is a present pending question which asks him whether in connection with his various duties if he had made a study.

The Court: The objection is sustained.

Mr. Margolis: Your Honor please, I just want to state this, that if this were the rule no corporation official could testify with regard to the activities of an organization. I think it is his common experience which is required in the course of his duties, historical information, and it is part of his regular function to do so, so he is qualified as an expert on that subject and can testify.

The Court: I think you can have the records here and somebody who has charge of them can testify as to what these records might reflect, because it is hearsay testimony and it is an encroachment upon the hearsay rule which is permitted under certain circumstances. I do not know what materiality it would make anyhow, or what difference what steps were taken. However, I will overrule the objection and get on.

The question was, are you familiar with the records, minutes and proceedings of the union.

The Witness: Yes.

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): What steps were taken in 1934?

The Court: Same objection? [2377]

Mr. Dixon: Yes, your Honor.

The Court: Same ruling.

Mr. Rubin: And on the further ground it is too remote, your Honor.

The Witness: The union was organized around the question of getting a minimum price contract for sardines, tuna and mackerel delivered to the canneries. That was actually the objective that led to the organization of the union. And their first step was an attempt to secure from the canneries such a contract.

Mr. Dixon: If the Court please, I believe that is clearly a conclusion of this witness and I would move that it be stricken and the jury instructed to disregard it.

The Court: I will so instruct the jury unless the defendants will make available to the Government the records which this defendant has based his conclusion upon for this examination.

Q. (By Mr. Margolis): Will you make those available, Mr. Kibre?

A. Yes, I think we can make a great deal of that information available. A great deal of that information, your Honor, is contained in a yearbook which was published in 1940, in connection with the International convention, at which time the representatives of the various affiliates gave reports which were printed in this yearbook, dealing with

(Testimony of Jeff Kibre.)

the history [2378] of their particular affiliate, how it was organized, what happened, and so forth.

The Court: Then I do not think the testimony is admissible.

Mr. Rubin: It is hearsay on hearsay.

The Court: Yes, it is hearsay on hearsay.

Mr. Dixon: And self-serving.

The Court: I do not say that they are inaccurate, but having been a secretary of several organizations myself and made annual reports, I think better evidence should be had.

Mr. Margolis: If your Honor please, the question of what the demands were, what the contracts were, that is not so. As to the questions of the arguments before them, that might be true.

The Court: The witness' knowledge in respect to it is too remote. It is hearsay on hearsay. If he had examined specifically the minutes of the meetings, documents, letters, correspondence, and so forth, and reached his conclusion, that would be different.

The jury is instructed to disregard the answer of the witness.

Q. (By Mr. Margolis): Have you examined such original documents?

A. Yes, I have read the complete files in San Pedro of the union going back to 1934. [2379]

The Court: But you just got through stating your testimony was based upon the yearbook and reports of secretaries.

(Testimony of Jeff Kibre.)

The Witness: That is a summary, but I just mentioned that because I thought that it might be helpful. I have read the complete file of the records and minutes of the meetings going back to 1934 in San Pedro where they are available, where I maintain a sub-office, I might point out.

Q. (By Mr. Margolis): Is your testimony based upon those original records which you have examined?      A. Yes.

The Court: Those records will be made available to Government counsel for their perusal?

Q. (By Mr. Margolis): Can we have them here tomorrow morning?

A. We can bring in the complete file with everything dealing with the union.

Mr. Margolis: That is in San Pedro, your Honor. That is why we asked for tomorrow morning.

The Court: You will have it here tomorrow morning?

The Witness: Yes.

The Court: Just the documents upon which you based your answers.

The Witness: Well, I don't know whether we can select the exact ones, your Honor. [2380]

The Court: Well, you said all the records.

The Witness: Yes, I say this, that I have read the complete records and I am speaking from a knowledge of the records.

Mr. Margolis: The point is, we will produce the file which includes the records upon which this was based.

(Testimony of Jeff Kibre.)

The Court: That will be produced?

Mr. Margolis: Yes, sir.

The Court: Very well. Then I will withdraw my instruction to the jury to disregard the last answer.

Q. (By Mr. Margolis): Was a contract prepared at that time?

A. A contract, yes, for a price of sardines——

The Court: Just a moment. Was a contract prepared, was the answer.

The Witness: Yes.

Q. (By Mr. Margolis): You can produce that?

Mr. Dixon: If the Court please, I assume that we have a continuing objection?

The Court: Yes. He said he is going to produce it.

Q. (By Mr. Margolis): Can you produce that contract tomorrow?

A. I am sure the contracts are in the files in San Pedro.

Q. Now at that time was any action taken by the union [2381] for the purpose or in connection with the securing of that contract?

A. Actually a contract was not won until——

The Court: No. Was any action taken by the union?

The Witness: Yes.

Q. (By Mr. Margolis): For the purpose of securing a contract? A. Yes.

Q. What action was taken?

A. They went on strike. [2382]



(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): Were the purse seine fishermen on other parts of the coast also organized about the same time?

A. About the same time.

Q. Where were they organized?

A. In the Puget Sound area—that is out of Seattle—the entire Puget Sound area.

Q. Are you familiar with the action that was taken there at that time?      A. Yes.

Q. What action was taken?

A. The salmon purse seine fishermen in the Puget Sound area organized what was called at that time the Salmon Purse Seine Fishermen's Union, and the herring purse seine fishermen who fish herring in Alaska but who are based on the Puget Sound area at about the same time organized what was called the Herring Purse Seine Fishermen's Union.

Q. When you say they are based in Seattle, you mean that their home port is in Seattle and they go up to Alaska and fish and then come back to Seattle, their home port, is that right?

A. That is right.

Q. Now subsequent to that, or at or about that time, were these organizations separate and independent of each other or were they combined?

A. These organizations were all independent of each other.

Q. Was there at a later time a combination of these organizations in any form, and if so, in what form?

(Testimony of Jeff Kibre.)

A. Yes, there was. In 1936 the various purse seine organizations which, by the way, were as in San Pedro included other types of vessels, small boats, came together and formed what was called the Federated Fishermen's Council.

Q. That was in 1936? A. 1936.

Q. I wonder if very briefly you could just give us the highlights of organizational changes which have taken place since that time without going into great detail.

Mr. Dixon: If the Court please, I rise at this point to object to any further line of questioning along this line on the ground that it is completely immaterial in so far as this association and its activities are concerned.

The Court: I think it is preliminary. On that basis the objection is overruled.

Mr. Margolis: Do you want the question read?

(The question referred to was read by the reporter as set forth above.)

The Witness: The Federated Fishermen's Council was organized in December of 1936. Immediately within a few months after its organization, in 1937, the Federated Fishermen's [2384] Council applied to the Committee for Industrial Organizations, as it was known at that time, for a charter.

Such a charter was granted late in 1937, a charter for a new International union to be known as the International Fishermen and Allied Workers, with jurisdiction over all fishermen and allied workers

(Testimony of Jeff Kibre.)

in the coastal waters of the United States, Alaska and the Great Lakes. That was granted late in 1937.

The new International was thereupon set up on the basis of the various fishing organizations that had come together in the Federated Fishermen's Council and the new International began its operation in 1938.

The Court: What do you mean, the new International?

The Witness: That is the former organization.

The Court: That is the organization of which Local 36 is now a part?

The Witness: That is correct.

Q. (By Mr. Margolis): But bearing the same name, is that right? A. That is right.

Q. And with the same affiliation except what was then the Committee for Industrial Organizations now became the Congress for Industrial Organizations? A. Yes.

The Court: The name of the federation was changed to [2385] what?

The Witness: The name of the Federated Fishermen's Council was changed to the International Fishermen and Allied Workers of America.

The Court: So that that is an organization covering all the United States?

The Witness: That is correct, with jurisdiction over all of the fisheries in the United States. Its main membership is concentrated on the West Coast and, to a large extent, consists of these early

(Testimony of Jeff Kibre.)

fishing organizations which had organized independent associations in various areas up and down the West Coast.

The Court: Which have now become chapters?

The Witness: That is correct.

The Court: Local 36 is what chapter?

The Witness: Local 36 is simply a local with the number 36. Local 36 was formerly the Fishermen and Cannery Workers Industrial Union in San Pedro. Its jurisdiction covered purse seine fishermen in San Pedro.

Mr. Margolis: We intend to cover that. I wanted to cover the International first and then bring in Local 36 afterwards.

I have a document here that I want marked for identification.

The Court: J for identification. [2386]

(The document referred to was marked Defendants' Exhibit J for identification.)

Q. (By Mr. Margolis): I hand you a document which has been marked for identification Defendants' Exhibit J and ask you what that is.

A. This is the constitution of the International Fishermen & Allied Workers of America.

Q. I noticed that this constitution has the statement: "As amended by referendum ballot certified April 15, 1942." I take it then that is not the first constitution that was adopted, is that right?

A. That is correct.

(Testimony of Jeff Kibre.)

Q. It is the original constitution as subsequently amended.

A. That is right.

Q. Now has this constitution been amended since April 15, 1942?

A. Yes, with respect to one clause, and that is the arrangement whereby the local affiliates pay per capita to the International. That is the only change.

Q. Can you produce copies of that change if it is desired?

A. They are now being printed in Seattle. I can give the exact change.

The Court: When was the change made? [2387]

The Witness: That change was made last year.

The Court: Was it made before or after August 23rd?

The Witness: It was made—I am just trying to recall whether the referendum ballot was completed as of that time. As I recall, the referendum ballot on the change was completed just sometime in August or thereabouts.

Mr. Margolis: We have no objection to producing the amendment if counsel for the Government desires it. It is a slight organizational change.

Now, if your Honor please, at this time we offer in evidence the constitution of the International Fishermen & Allied Workers of America, affiliated with the Congress of Industrial Organizations, as amended by referendum ballot certified April 15, 1942, which is now marked Defendants' Exhibit J for identification.

(Testimony of Jeff Kibre.)

The Court: Admitted.

(The document referred to was received in evidence and marked Defendants' Exhibit J.)

Mr. Margolis: I would like to read portions of it.

Ladies and gentlemen of the jury, this document which is in evidence will be available to you so that you can, if you desire, examine it in its entirety, however, at this time, I want to read to you certain portions of the constitution.

\* \* \*

Q. What is the policy and practice of the union with respect to the admission or non-admission of working fishermen or owners of boats who do not work? [2390]

\* \* \*

The Witness: Our International executive board has enunciated a policy, which we urge all affiliates to follow, namely, that they should accept into membership only working fishermen.

Mr. Rubin: Your Honor please, we submit that the answer is not responsive to the question. The question, if it were read, would indicate a reference to whether or not they are owners of boats or simply working fishermen.

The Court: That is correct. I do not understand the answer. In other words, I do not know after hearing the answer whether or not an owner of a boat can join this organization.



(Testimony of Jeff Kibre.)

Mr. Margolis: Let me ask this:

Q. Is an owner of a boat who is also a working fishermen eligible to join this organization?

The Court: I wouldn't know from that answer what is a working fisherman. That is the key to your question.

What do you call a working fisherman?

The Witness: Anyone who works on a boat, your Honor.

The Court: Including an owner of a boat?

The Witness: That is right.

Q. (By Mr. Margolis): If he works on the boat as part of the fishing operation, is that right?

A. That is right. [2391]

Q. Now using that term "working fisherman" as a man who works on the boat in the fishing operation, does your organization admit into membership working fishermen who are also owners of boats?

A. Yes, we admit working fishermen who are owners of small boats.

The Court: What do you mean by small boats? What is a small boat?

Mr. Margolis: All right. Go ahead.

The Witness: The answer is, yes, that we do admit owners of boats, providing they are working on the boat.

The Court: Whether it is a big boat or a little boat?

The Witness: On large vessels, on large fishing vessels, the policy has been—and this is where the

(Testimony of Jeff Kibre.)

problem has arisen—to accept only those working fishermen on the boat. Now generally on a large fishing vessel the owner of the boat is a canner, is an absentee owner, and we don't permit them into the union.

The Court: What is a small boat? You say a small boat and a large boat. Say it is a 100-foot boat, and one of these men over here owned the boat and he worked on the boat, would he still be eligible to join the union, or could he join the union, or the organization?

The Witness: On the large vessel such as that, generally the boat owner is not a member of the union. [2392]

The Court: He can't be?

The Witness: That is correct.

The Court: That is correct, that he cannot be?

The Witness: No.

The Court: Where is the dividing line?

The Witness: I was trying to explain it. There is no sharp dividing line in this sense, your Honor, that many of the fishermen on the large boats, that is, on the purse seiners, do own a share in the boat, or are part owners of the boat, and these men are eligible and become members of the union. The dividing line has grown up somewhat along these lines, that absentee owners of the fishing vessels, whether they be fishermen or whether they be canners, are not eligible to become members of the union. [2393]

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): What do you mean by absentee owners?

A. That is persons who invest in a fishing vessel for their profit.

Q. And who do not themselves work on that particular vessel, is that right?

A. Yes, that is correct.

The Court: In other words, one of the gentlemen here, Smitty they call him, he might own one boat and fish on it, and he might own six other boats, but he can only have one membership, is that right?

The Witness: That is correct. [2394]

\* \* \*

Q. (By Mr. Margolis): Article III of the Constitution Organization and Representation:

“The organization shall be composed of local unions, district unions and organizing committees affiliated to the International.”

Will you tell us what the difference is between a local union, a district union, and an organizing committee?

A. A district union is a union which extends over a fairly large area. For example, the Alaska Fishermen's Union, which is an affiliate of our organization, is a district union; the membership of that union, a large portion of them, live in the North Pacific States, and they go up to Alaska in the summertime to fish. Additional membership in that union lives in Alaska. The union has branches

(Testimony of Jeff Kibre.)

in Seattle, for example, Portland, San Francisco, and then at least in half a dozen locations in Alaska. That is a district union.

A local union is one such as Local 33 here in San Pedro, where its jurisdiction is confined to a single port. Now, Local 36, which is involved in these proceedings, is a district union. Its jurisdiction extends over a number of fishing ports.

Q. What is that? [2395]

A. From Morro Bay to San Diego.

Q. Morro Bay to the southern limits of the United States?

A. Yes.

Q. On the Pacific Coast?

A. That is correct. That is the distinction between a local union and a district union.

Q. An organizing committee is——

A. An organizing committee may be a group of fishermen in some fishing port who have set themselves up as a committee to organize the fishermen in that port, and they may thereupon be chartered by the organization as an organizing committee, and when they actually organize a local or district union then we finally issue them a charter as a regular affiliate.

Q. Section 2 of the same article reads. "The head——

\* \* \*

Q. Now, I want to pause at this point and ask you this question: In all of your organization does any member of the organization have more than one vote?           A. No.

(Testimony of Jeff Kibre.)

Q. Does each member have one vote?

A. Precisely.

Q. Are there any payments of any kind of dividends made by the organization or any local thereof to any of its members?

A. No. [2398]

\* \* \*

How many locals does this International have affiliated with them? [2401]

A. At the present time we have approximately 50 active locals.

Q. Generally, without giving us the specific details, where are those locals located?

A. Throughout up and down the west coast from Bristol Bay, which is one of the extreme northerly points in Alaska, to San Diego on the Pacific Coast, and in the Great Lakes on Lake Erie, Pennsylvania, down in the Gulf, and to some extent on the East Coast in the Chesapeake Bay area.

Q. I think you already said that the majority of your membership are out here on the Pacific Coast, is that right?

A. That's right; that's right.

Q. In any port which you have organized is the organization limited to one local, or are there some ports in which the fishermen are organized into more than one local?

A. In some ports there are two locals.

Q. Give us just one or two examples.

A. One example is San Pedro, we have Local 33 and Local 36, although Local 36 includes not



(Testimony of Jeff Kibre.)

only the port of San Pedro but other ports in Southern California as well. In Seattle we have two locals; Local 3, which is a district union extending throughout the Puget Sound area, and in addition we have Local 53, which is largely limited to the immediate vicinity of Seattle. Those are two examples. Well, in Astoria we also have two locals. We have the Columbia River [2402] Fishermen's Protective Union, which extends throughout the area of the Columbia River, and we have another local there, Local 50, which is confined largely to vessels based at Astoria itself.

Q. I think you already testified that in 1934 the purse seine fleet was first organized at San Pedro, and at that time it included small boats, as well as the purse seine fleet. Will you please sketch very quickly and briefly for us the development of organization in the Southern California area since the purse seine fleet was organized in 1934 as you have outlined?

A. Originally the small boat fishermen in San Pedro, for example, were a part of Local 33; the small boat fishermen in Newport at the time were members of another local union known as Local 36; so up to 1940, or, rather, in 1940, to fix a period, the small boat fishermen in San Pedro were a part of Local 36, the only other organization in Southern California was Local 36, which was confined to Newport at that time, and which——

Q. May I interrupt you a moment? I think you misspoke yourself. You said the small boat fishermen in San Pedro were a part of Local 36.



(Testimony of Jeff Kibre.)

A. Were a part of Local 33. I am using the year 1940 because we can fix it as of a given date. At that time the small boat fishermen in San Pedro were a part of Local 33, and the only other organization we had in Southern California was [2403] Local 36, which was based in Newport Beach, and which included small boat fishermen. After the war started the small boat fishermen found it very difficult to operate out of San Pedro, because of naval restrictions governing the entry of vessels into San Pedro, a large number of small boat fishermen based in San Pedro began to deliver their fish at Santa Monica, and the fish that they delivered to Santa Monica was thereupon trucked to the canneries in San Pedro and in Long Beach.

Q. When did this start,—about 1940?

A. This started about the summer of 1942 after the war started.

Q. I see.

A. And early in 1943, or, rather, in the spring, the late spring of 1943 we began an organizing campaign in Southern California to bring the small boat fishermen in Santa Monica, Redondo and Newport, into an overall union. This was in the late spring of 1943. Shortly thereafter in 1944, after the organization of fishermen in Santa Monica and in Redondo, and the reorganization of the fishermen in Newport on a much larger scale we thereupon set up Local 36 as a district union. In other words, the jurisdiction of Local 36 which had originally

(Testimony of Jeff Kibre.)

been confined to Newport Beach was now enlarged to include all of the small boat fishermen in the Southern California area from Morro Bay to San Diego.

The Court: When was this? [2404]

The Witness: This was in 1944.

The Court. What time of the year?

The Witness: As I recall it was late—as I recall, I think it was in the early summer of 1944. It was on the basis of a ruling taken by the International Executive Board upon a request from Local 36.

Q. (By Mr. Margolis): In other words, Local 36 made the request to the International Executive Board for the organization of all small boat fishermen in this area into Local 36, is that right?

A. That is correct.

Q. That was granted——

A. Sometime in the late spring or summer, or thereabouts, of 1944.

Q. I see. What happened after the request was granted?

A. After that request was granted the small boat fishermen who had been in Local 33 thereupon were asked to join Local 36 and to become a part of Local 36.

Q. Did that take place?

A. That did take place.

The Court: What happened to Local 33 then?

The Witness: Local 33 remained as a local confined to the large vessels, the purse seine vessels.

The Court: In other words, cannery fishermen?

(Testimony of Jeff Kibre.)

The Witness: I can put it this way: that it was confined [2405] to purse seine fishing and the jurisdiction of Local 36 as it is defined in the Constitution of Local 36 includes all fishing other than vessels using purse seine or lompare gear. Lompare is similiar to purse seine. The reason I didn't say that Local 36——

The Court: In other words, Local 36 covers everything except purse seine or lompare.

The Witness: That is right.

Q. (By Mr. Margolis): Lompare gear is a similar type of gear to purse seine?

A. Yes, quite similar.

Q. That is always used on large boats, is that right?

A. That is correct.

Q. No small boats use either purse seine or lompare gear, do they?

A. It is just impossible for small boats.

The Court: To use purse seine?

The Witness: To use the kind of purse seine gear that we are discussing here.

The Court: They do use purse seine, though?

The Witness: Here is where confusion has arisen. For instance, in Alaska a large number of boats fishing salmon use what is commonly described as seine gear, and is confused with purse seine. Actually it is gill nets or drift nets. A purse seine is a very large net, extraordinary [2406] large net, and it requires a large vessel with mechanical power to operate the net, with a boom, for example. And a great deal of operation in purse seine requires

(Testimony of Jeff Kibre.)

the use of a boom, mechanical power, as distinguished from small boats. They use small gear that is pulled by hand, literally. It is muscle operation in the small boats as contrasted with a great degree of mechanical power in the large boats known as the purse seines.

Q. (By Mr. Margolis): Is that true also of the lompore boats? A. Yes, yes.

Q. Are you familiar with the history of strikes by fishermen on the Pacific Coast?

A. Yes.

Q. I wonder if you could give us a brief sketch again of the history of strikes among fishermen here on the Pacific Coast?

Mr. Dixon: If the court please, I object to this question as being wholly incompetent and immaterial as far as this particular Local 36 is concerned, because it assumes that you have a valid strike to begin with, which you can have according to our contention only when you have an employer-employee relationship, which is assumed in the question.

Mr. Margolis: Let me say this.— [2407]

The Court: The history of strikes by fishermen on the Pacific Coast? I don't know. I might be here for a couple of weeks.

The Witness: I think it can be done in a minute and a half, two minutes.

Mr. Kenny: I think the court will ask the jury to disregard counsel's statement about employer-employees relationship being necessary. A new-

(Testimony of Jeff Kibre.)

boys' strike could take place and there wouldn't be an employer-employee relationship.

Mr. Dixon: It is in the indictment, your Honor.

Mr. Kenny: That doesn't make it so.

The Court: That is their position. And the jury understands by this time that they are going to receive the law from the court—I hope, anyhow—sooner or later.

The question is what is the history of strikes by fishermen on the Pacific Coast?

Mr. Margolis: I am asking for a brief summary.

The Court: I can't see how that is material. Maybe if you would make it more definite and certain, it would be, but that question is not. Objection sustained.

Q. (By Mr. Margolis): Starting in with the year 1934, the date on which the purse seine fleet in San Pedro was organized as you have testified, give us a brief history of the strikes.

Mr. Dixon: I still object, your Honor, on the ground [2408] it is entirely immaterial.

The Court: I can't see how even that would be material, counsel, the history of strikes. I don't see what that has to do with the controversy that is involved. Objection sustained.

Mr. Margolis: Do I understand, your Honor, so I may be guided with regard to making my offer of proof and also with regard to further questions, that the objection was sustained on the ground of remoteness——

The Court: It is immaterial.



(Testimony of Jeff Kibre.)

Mr. Margolis: We can't go into any strikes, in other words, other than the one involved——

The Court: I don't know. I am just saying that the objection to that question is sustained on the ground it is immaterial. I don't know what other strikes there were. I don't know whether they would be material or not material, until I am presented with the proposal. But certainly what other strikes there were since 1934 is immaterial in connection with this controversy.

Q. (By Mr. Margolis): Will you tell us what other strikes there have been in the Southern California area, that is, the area from Morro Bay south, since 1934?

Mr. Dixon: Same objection, your Honor.

The Court: Objection overruled. I will reverse myself. I will sustain the objection. It assumes there have been strikes. It assumes a fact not in evidence. [2409]

Q. Have there been strikes in the Southern California area, that is, from Morro Bay south?

Mr. Dixon: I object.

The Witness: Yes.

The Court: Since 1934, is that right?

Mr. Margolis: Since 1934, other than the 1946 strike.

Mr. Dixon: Object, your Honor, unless it is tied in with this organization, Local 36.

The Court: It might be. He said, have there been any strikes.



(Testimony of Jeff Kibre.)

Mr. Dixon: We claim whether there have been any strikes other than this is wholly immaterial unless it involved this organization.

The Court: It might. Objection overruled. His answer was yes.

The Witness: Yes.

Mr. Margolis: All right.

Q. Will you state briefly when these strikes occurred and what boats they involved?

Mr. Rubin: Now that objection is appropriate, your Honor, because it should be limited to this organization. There are AFL fishermen, there are CIO fishermen, there are big boats, there are little boats, there are canning fishermen, there are market fishermen. We submit all that would be completely immaterial to the nature of trade and commerce [2410] that is referred to specifically in this indictment that is the subject of the alleged conspiracy in restraint of trade.

Mr. Margolis: I submit, your Honor, it is all a single industry.

Mr. Dixon: There might be a legitimate labor dispute involved also.

Mr. Rubin: The fact that it is all the same industry doesn't make it all material in this case, we submit.

Mr. Margolis: It is the same industry, same area, same fishermen.

The Court: Do you want to argue? If you do, we will dismiss the jury.

(Testimony of Jeff Kibre.)

I think that your question is too broad and is too indefinite and uncertain. I will sustain the objection on the ground that it is immaterial. If it can be related to this particular controversy, then it may be material.

Mr. Margolis: All right.

Q. Have any of these strikes included boats, small boats, engaged in market fishing?

A. Yes.

Q. Now will you give us the history of those strikes which have included small boats which engage in the market fishing.

Mr. Rubin: We object, your Honor:

The Court: Objection overruled. [2411]

The Witness: There was a strike in 1938 which lasted for several months in the late spring and early summer of 1938, at a time when what is now known as Local 33 included not only purse seiners but also the small boats, the so-called market fishing boats.

Q. (By Mr. Margolis): In other words, that was Local 33 but it was the union which preceded Local 33?

A: At that time it was the United Fishermen's Union of the Pacific and included all types of fishing and all types of fishermen. That was a very lengthy strike that lasted for several months.

\* \* \*

Q. Had the union made demand prior to going out on strike?

(Testimony of Jeff Kibre.)

The Court: That still calls for a conclusion of the witness and, as far as this witness is concerned, it is hearsay and no foundation laid. [2412]

Were you a fisherman at that time?

The Witness: No.

The Court: Were you engaged in the fishing industry?

The Witness: No, I was not.

The Court: You were not?

The Witness: That is correct.

The Court: You were not engaged in the fishing industry?

The Witness: At that time?

The Court: At any time. In other words, your first connection with any phase of the fishing industry was in 1940?

The Witness: 1940; correct.

The Court: Were you at that time engaged in work in the canneries or in San Pedro?

The Witness: No. I was a field representative at that time for the CIO and I was just down there to assist them in the strike, as a matter of fact, to assist the fishermen's union in San Pedro in the course of that strike.

The Court: In 1938?

The Witness: In 1938; that is correct.

Q. (By Mr. Margolis): Do you know whether any demands were made by the union at that time prior to going out on strike?

Mr. Dixon: Object to that, your Honor.

The Court: Objection sustained. [2413]

(Testimony of Jeff Kibrè.)

Q. Do you know whether a proposed contract was submitted prior to the strike? A. Yes.

\* \* \*

Q. Now following that strike in 1938, were there any other strikes?

A. Yes. In the summer of 1941 there was a strike involving the small boats which at that time were members of [2414] Local 33. It was a tie-up by the small boat fleet.

The Court: That was at San Pedro?

The Witness: Yes.

The Court: And the other one was at San Pedro?

The Witness: That is correct.

The Court: Only at San Pedro?

The Witness: That is correct.

Q. (By Mr. Margolis): Were any demands prior to that strike?

A. Yes, there were demands for a contract specifying a minimum price for mackerel. [2415]

\* \* \*

(The following proceedings were had in the absence of the jury:)

Mr. Dixon: May it please the court, before the jury comes in I would like to renew our objection to the admission of any further testimony relating to strikes as indicated by this witness. We feel that it is wholly immaterial, and I am frank to say I don't see what the purpose of the testimony is or how it could possibly be revelant to the issues

(Testimony of Jeff Kibre.)

of this case. Second, perhaps, assuming that your Honor sustains that ruling, or our objection to that line of testimony, perhaps it might save time if your Honor feels that now is the time for the proffer of such further evidence of that character as the defendants may care to submit for the purposes of the record.

The Court: Let's see. Just as we recessed at noon we were looking for some paper?

Mr. Margolis: That's right. I found we haven't got that.

The Court: What kind of paper was that?

Mr. Margolis: A contract.

The Court: A canner's demand?

Mr. Margolis: No. The union's demand.

The Court: On the canners? [2416]

Mr. Margolis: On mackerel prices. What I intend to do——

The Court: I don't think that is material.

Mr. Margolis: What I intend to do in view of the fact that I haven't the paper here is to pass on to some other subject and come back to that later.

The Court: In other words, I have permitted your questions because I don't know what the answer is going to be. If the witness would say, "Well, yes, there was a strike May 29th, but we also had one in April"—as far as I know I don't know what the answer is going to be—that would certainly be material. We will call the jury down.

Mr. Margolis: Before that is done, your Honor, I would like to understand just where we do stand



(Testimony of Jeff Kibre.)

on this. We intend to show that the small boats fished for the canneries also, and that this contract for which negotiations were entered into that resulted in strikes were contracts which directly affected the price received by the working owners and the non-owning fishermen on fish which went to the canneries. We intend to show, in other words, with regard to the canneries, the situation as far as the contract covering on the small boats the price which both owners and non-owner working fishermen received was the same as in the market, and that the situation therefore is an identical situation in this area. [2417]

The Court: The owners and non-owners received from the canneries?

Mr. Margolis: That is right.

The Court: The price that fishermen received, in other words?

Mr. Margolis: Fishermen whether they were owners or non-owners of the boats.

The Court: In short, that the price of fish was the same at the canneries as it was at——

Mr. Margolis: Another reason why we want to show this, your Honor, is we intend to show that the effect of these contracts, these cannery contracts, was to stabilize within very narrow limits the price paid for the fish in the fresh markets, because the fishermen——

The Court: What difference would that make?

Mr. Margolis: Well, the government has introduced evidence here in which they had witnesses



(Testimony of Jeff Kibre.)

testifying on behalf of the government stating when they went out there to buy fish there was competitive bidding, and all that sort of thing. We at least have the right to meet that testimony to show that is not the situation, and one of the ways—not the entire way, but one of the ways we have of showing it is that with regard to certain species of fish which have been covered by cannery contracts the effect of the fixing of the price for the canneries is to fix the price as a practical [2418] matter for the dealers, because of the fact that the fishermen always go to the canneries to sell their fish at a fixed price, and therefore that fixed a floor for the dealers below which the price of mackerel and other species of fish which were sold to the canneries could not fall, because we intend to show that the fishermen at all times could sell all of their fish to the canneries. [2419]

The Court: I see what you mean.

Mr. Rubin: That would mean, if your Honor please, that there might be another violation of the law involved here involving the canners, but that has nothing to do with this case. The fact that the canners stabilized prices also might mean another violation. As your Honor indicated, it is up to the Government to pick and choose their prosecution. We may not have gotten to them yet. But showing that the canners stabilize their fish is certainly no defense under any theory as to what we have alleged to have occurred here.

(Testimony of Jeff Kibre.)

Mr. Margolis: But we do have a right to meet the Government's testimony that there was competitive bidding for this fish, and we will show that there wasn't competitive bidding. Otherwise when the Government has introduced evidence to the effect that there is competitive bidding, are we not at liberty to make some showing to show factors that have made competitive bidding impossible?

Mr. Dixon: This case and this indictment is confined entirely to the fresh fish market and to the fresh fish that is caught and sold to those markets. What the prices are that may be paid by the canners for fish purchased for canning purposes is not an issue in this case or in this indictment.

The Court: No, I do not think it is, counsel, but you allege in your indictment that this conspiracy to fix the [2420] price was to fix the price so it was a non-competitive price.

Mr. Dixon: To fresh fish dealers.

The Court: To fresh fish dealers.

Mr. Dixon: That is right.

The Court: Suppose that there are some other factors, which they contend there is, which caused this non-competitive price. Of course you have shown under your testimony your theory that there were competitive prices fixed. Now if there were not competitive prices fixed, if some other factors entered into it, is or is there not a failure of proof on the part of the Government or isn't there a direct conflict?

(Testimony of Jeff Kibre.)

Mr. Margolis: It is a factor to be weighed by the jury. We don't contend that any one of these factors is determinative of the case.

Mr. Dixon: What purpose is the evidence competent for? I confess, maybe I am dense and can't see for what purpose it is competent, but I just cannot see it.

The Court: You say one of the purposes and objects is to fix the price of fish so as to prevent a competitive price from being fixed. In other words, to fix an arbitrary price, one that was established in a non-competitive manner. I think that is the language of your indictment, isn't it?

Mr. Dixon: To the fresh fish market purchasers entirely.

The Court: To the fresh fish market purchasers.

Mr. Dixon: That is right. A conspiracy to fix prices for that purpose.

The Court: Now counsel is urging that there are other factors which caused that non-competitive price, one of them being the fact that the canneries had a floor on certain types of fresh fish.

Mr. Dixon: That might indicate that the canners had conspired among themselves to agree on a price that they would pay to those who sold fish to them for canning purposes, which would be entirely another case and might put someone else on trial.

The Court: I think that might be true, counsel, but it seems to me as though they have a right to put that evidence in. Then if you contend that regardless of the floor put by the canners or by this

(Testimony of Jeff Kibre.)

other asserted violation, that the price that they fixed was above that or was fixed anyhow——

Mr. Dixon: It is immaterial whether it is above or below.

The Court: I think that is probably so.

Mr. Dixon: I mean, what someone else pays or what other arrangements, contracts or agreements the canners have entered into, either among themselves or with such boats as may sell them fish for canning purposes, is certainly not within the purview of this indictment.

I believe the testimony brought out on cross examination [2422] of the Government's witnesses pointed out that that type of fish, as I recall it, was not in the same market as the fresh fish market fish. It was in an entirely different category. And in the opening statement we expressly pointed out to the jury that this was a case involving the sale of fresh fish to the fresh fish market and that no canning fish was involved in this conspiracy.

Even if it were, which we submit it is not—I submit to your Honor that again whether someone else had violated the law or not, assuming for the purposes that that is what they are putting it in to prove, and then that will be something else, that someone else violated the law—that is no defense to a charge of conspiracy here that these defendants have conspired to fix the price at which they will sell their fresh fish to the fresh fish market dealers.

At least I submit that I cannot see any relevancy to it or any bearing upon it in a price-fixing case.

(Testimony of Jeff Kibre.)

That type of evidence, in our opinion, is irrelevant and immaterial, as is this evidence to which we objected that in 1938 Local 33 had a so-called strike. Whether there was or wasn't a strike, for example, is a question in which you have to determine whether there was a labor dispute. I do not see how it is competent to help this jury in deciding whether Local 36 was engaged in a labor dispute, but if that is the purpose of it then we have to determine and go into the question of what was back of [2423] that strike, so-called, whether there was a legitimate labor dispute, what the composition and membership of that particular union was, because we concede, your Honor, that certain unions may strike.

The Court: Counsel is not going to pursue it now, so let's get some evidence in.

Mr. Dixon: I want to renew our objection on the strike point and if your Honor overrules it, I would ask, if it is to go in at this time, and further testimony of that kind is to go in, that the jury be instructed for what purpose it is being offered so that they will not be confused in the issues, because we feel that it may tend to confuse them.

The Court: It is not your purpose to pursue that any further at the present time?

Mr. Margolis: Not at the present time, but I will be back at this this afternoon before very long. I will state frankly why I am dropping this. I don't have certain contracts here. I do have other contracts here to which I want to introduce some pre-



(Testimony of Jeff Kibre.)

liminary evidence, and then I am going to get to some later contracts which are the same kind of contracts. So the question will be before your Honor very shortly, I would say within the course of the next 15 or 20 minutes after we begin taking evidence.

The Court: Let me see your other contracts. Let me see what you are talking about. One reason that the matter is [2424] difficult to rule on is because I do not know whether your strikes were or were not——

Mr. Dixon: Or against whom, your Honor. As I say, our view is that this type of testimony would be very prejudicial to the Government's case because at the best it will set up a situation where, if competent or if admitted, the jury can say, well, other people did the same thing and the Government is prosecuting here for something which apparently they did before and didn't do anything about, which of course is not material to the issues in this case.

Mr. Margolis: Here is one of the contracts which we will seek to offer. It is on a little different approach. It is the northern California contract covering fresh market fish and it going to be our contention that that fish from northern California caught under that contract comes into this area in large volume and fixes price, or is one of the factors which fixes prices.

The Court: This is San Francisco?

Mr. Margolis: It includes San Francisco. It is northern California but includes other areas than San Francisco.



(Testimony of Jeff Kibre.)

I would like to say a word or two about counsel's contention. In effect he is saying that this court must, in advance of the evidence, determine that the contracts which we are offering constitute a violation of the anti-trust law. That is what he is saying. He is saying, "We say they are [2425] violations of the anti-trust law and therefore are illegal agreements and therefore the court must not admit them." If those agreements are illegal agreements and that is one of the contentions that the Government is making, it has to prove it, but here is what the Government has done in its own case: It has put in evidence as to how prices are fixed, it has put in evidence as to how the price which the fisherman gets is determined. Now are we to be allowed to put in other evidence to meet that? We contend that it is determined by other factors than competitive bidding. We contend that there are a number of factors which determine the price which the fisherman gets. So we simply have to accept their statement that it is determined by competitive bidding, or can we show what other factors determine the price? That is how simple the issue is. [2426]

Mr. Dixon: I submit, your Honor, precisely what the defendants are endeavoring to do is what this court has ruled they cannot do; put someone else on trial. If these are price-fixing contracts—and they may well be; I haven't seen them—the position of the government would be that they are not only immaterial but would be highly prejudicial.

(Testimony of Jeff Kibre.)

The Court: I think this contract would be immaterial no matter who it was presented to or who signed it.

Mr. Margolis: If your Honor please, I contend that contract is one of the factors which fixed the price of fish. Otherwise we just simply have to accept the government's statement as to how the price of fish is fixed.

The Court: No, you don't have to do that.

Mr. Margolis: How can we do that——

The Court: You can put in evidence to rebut the evidence they put in, to show what they put in isn't true.

Mr. Margolis: This is precisely what this is directed to.

The Court: How does this contract fix the price of fish? How does a strike against a cannery fix the price of fish? And a demand made, how does that fix the price of fish in 1946?

Mr. Margolis: The strike was the thing which preceded the obtaining of the contract. What happens is that there [2427] was a strike for a contract, a strike in which the small boats were involved, both boat owner and boat puller; that these contracts fix the price on fish which was sold in large volumes to the canneries, and in small volume to the market dealers. We intend to show that these contracts served the effect of fixing the price paid by the market dealers for the species of fish which were also sold to the canneries. We intend to show that that is one way in which prices were fixed and

(Testimony of Jeff Kibre.)

prices for those fish were not fixed by competitive bidding at all, as testified to by government witnesses.

The Court: Let me see. Suppose the jury accepts that, what has that got to do with the contract that you submitted and the demands you made?

Mr. Margolis: What did the government's evidence—do we have a right—

The Court: Just suppose the jury accepts that position you have just stated and says, "Well, that is true," does that make it any the less an agreement on the part of the defendants here to demand that the fish price be fixed according to that contract there?

Mr. Margolis: It would show the fact that the factors which determine the price of fish which these people can ask are not fixed by these people, they are not arbitrary prices. The government has alleged they are arbitrary prices. We show these prices are fixed by other factors to be embodied by the contract.

The Court: They are alleging you conspired to fix prices.

Mr. Margolis: That is their allegation, if your Honor please. We don't have to accept their allegation as true, or we wouldn't be here; we would have pleaded guilty.

The Court: You have to rebut it.

Mr. Margolis: We do by showing there are other factors which fix the prices.

The Court: Fix the prices that you fixed, the OPA prices in that (indicating).

(Testimony of Jeff Kibre.)

Mr. Margolis: That determined a floor on prices. Other factors besides——

The Court: Than that contract?

Mr. Margolis: That is right.

The Court: Then what is the good of the contract? What did they strike for? They submitted a contract, and if prices were fixed by other things what good was it going to do them to have a contract or strike?

Mr. Margolis: The point is it is not our contention that with regard to every species of fish this was done, but this was done with regard to certain species of fish.

The Court: To-wit, what,—mackerel?

Mr. Margolis: Mackerel, tuna, all species of tuna, there are four of five different species of tuna, and mackerel. [2429] With regard to other products, that those products were in competition with——

The Court: Well, specifically tell me what you want to prove now before we bring the jury down here again.

Mr. Margolis: There are several different types of contract we want to put in.

The Court: All right. The one that is pending now is the offer of proof of the contract for the canneries in what year?

Mr. Margolis: We are going to put in the current contract.

The Court: You had some testimony—the testimony of Mr. Kibre just before lunch, you were looking for a contract.

(Testimony of Jeff Kibre.)

Mr. Margolis: We intend to show that as far back as the court will permit us to go there have been contracts with the canneries.

The Court: That is 1940 or '44?

Mr. Margolis: I think it was 1938 or '39 we referred to. This was in 1941.

The Court: All right. What is your next one that you want to offer?

Mr. Margolis: The next contract—we will want to offer the contract of the fresh market dealers in Northern California.

The Court: This one here that you have handed up to me? [2430]

Mr. Margolis: Yes.

The Court: What date is that?

Mr. Margolis: That is the contract currently in effect.

The Court: What date was it made?

Mr. Margolis: It was entered into in 1944.

The Court: This says 1946.

Mr. Margolis: It was renewed in 1946. This was the renewal of a 1944 contract.

The Court: That is Northern California, 1944. Do you have a renewal of canners'? Have you?

Mr. Margolis: Yes, we have a renewal of the canners' agreement right up to date.

The Court: When was the canners renewed after 1941?

Mr. Margolis: Since 1938, your Honor, continuously.



(Testimony of Jeff Kibre.)

The Court: 1941 is what we are talking about. When was the next one of the canners'?

Mr. Margolis: '42, I believe.

The Court: Is it an annual contract?

Mr. Margolis: During the war they paid straight OPA ceilings.

The Court: And there was no contract?

Mr. Margolis: There was no contract, but they paid OPA ceilings. Fall of this year.

The Court: 1946 or '47?

Mr. Margolis: '46. [2431]

The Court: We have reached the appropriate state of confusion in this case; this fall is already here.

That is in 1946. There is Northern California, 1944, which is annual and is still in effect, is that right?

Mr. Margolis: Yes.

Mr. Rubin: It was renewed in 1946, I think.

The Court: What other contracts?

Mr. Margolis: We have two contracts covering the Alaska salmon industry, one of which is dated 1944, and one of which is dated 1945, which the testimony will show is entered into from year to year, and the last one was entered into for the 1947 season.

I want to say, your Honor, these contracts, if we put in evidence the entire file of contracts which have been entered into it would form a stack pretty high, and the way we intend to do it was to put in a few contracts, which are typical, we are willing to



(Testimony of Jeff Kibre.)

produce all of the rest, any contracts that the government wants produced we are willing to produce, but the manner in which we intended to proceed, in order to not have too many exhibits in the record, was to put in several typical contracts and state for how long contracts of that kind had been in effect and whether they were in effect now.

Now, we have, also, fresh fish contracts covering other areas. [2432]

The Court: The Northern California is fresh fish.

Mr. Margolis: Washington—we have two Washington agreements.

The Court: The Alaska salmon, however, is a canners' contract?

Mr. Margolis: That's right, your Honor.

The Court: All right. What else were you going to offer on contracts?

Mr. Margolis: Those are the only agreements we intended to offer at this time, your Honor, but we did intend to have testimony that there were similar agreements in effect with the statement that we would be willing to make them available to the government if it wanted to put them into evidence, but that we didn't want to put—we wanted these in by way of illustration of the kind of agreements that there were, but we don't want to put in 50 or 75 or 100 contracts into evidence, when in effect they will be cumulative, but we do intend to offer evidence that there are similar contracts.

(Testimony of Jeff Kibre.)

Mr. Rubin: If your Honor please, I would just like to make this one comment. The fallacy of counsel's argument rests in this situation: Let's take the Northern California fresh fish contract. As I understand their thesis they want to show that because the price is stabilized in San Francisco and they import fish to Los Angeles from San Francisco, in some fashion that that is a factor in computing the competitive [2433] element of price here in Los Angeles. The fallacy is this. If the situation were just precisely reversed, if this were an action in San Francisco on that particular contract which was in force up there, and they wanted to show that the reason they couldn't function under that stabilized contract, if they wanted to show in Los Angeles there was no contract and that the unstabilized fish from Los Angeles competes with the stabilized fish in San Francisco, I could possibly see some relevancy. But what they have done here is just the reverse. They are trying to show they have to have a stabilized contract here because the dealers there have entered into a similar contract. It seems to me that the conclusion doesn't follow. They have reversed the logic of the thing. If there is competition in this area here, it doesn't make any difference whether or not they put a floor on price elsewhere. As a matter of fact, it might increase competition in this area. Because here if they had a free market then the fact that San Francisco has eliminated themselves from the market by reason of a stabilized contract would simply make the competitive

(Testimony of Jeff Kibre.)

situation in San Pedro that much freer. They have reversed the situation, and that is the fallacy involved. The fact that it is stabilized in San Francisco or Oregon or Seattle or elsewhere in Los Angeles with respect to the canneries it occurs to us can in no manner affect the stability or the competitive market existing in fresh fish to these dealers at these ports.

The Court: It looks to me like it might affect it in favor of the government's point of view.

Mr. Rubin: They might show it is more stabilized, but we don't have to go to those other contracts to show a common plan or design.

The Court: If they go to work and prove your case for you and prove it is stabilized elsewhere and the union has caused the price of fish to be fixed on these contracts elsewhere, which leaves a competitive market here because that is introduced, what objection have you got?

Mr. Rubin: I submit that would nail just a few more nails in the coffin, I will agree with the court's observation, except that we know that because we perhaps are more concerned with the technicalities, but in so far as the jury is concerned they are going to get the impression that because in fifty other—

The Court: The government is going to have some very capable men argue it, I imagine. [2435]

Mr. Rubin: Apparently this jury, if it is a representative cross-section, they appear to be quite intelligent too, but they are going to get the impression, if your Honor please, that here are 50 con-

(Testimony of Jeff Kibre.)

tracts all up and down the coast and we have prosecuted only one, and I think that is the purpose of this particular type of evidence, regardless of what the avowal may be.

Mr. Margolis: Of course, if counsel chooses——

Mr. Rubin: I do not mean that in a personal way.

The Court: Ordinarily I give an instruction and I had anticipated giving it in this case that because someone else has committed the same offense is no excuse.

Mr. Rubin: And therefore this is not material, if your Honor please.

Mr. Margolis: We intend to prove quite the opposite of what counsel contends, that as a matter of fact fish coming in from areas where the price to the fishermen is stabilized undersells the fish in this area where the price is not stabilized and that there is no realationship——

The Court: That is what the Government is saying, it produces a competitive situation, and that what you are doing here is eliminating that.

Mr. Margolis: In spite of the stabilized prices in those areas the competitive position is maintained. Where fish has a stabilized price, that fish comes in here, and 80 [2436] per cent of that fish comes in here and outsells the fish where we don't have a stabilized price. It shows the competitive system is maintained.

The Court: It is maintained by what?

(Testimony of Jeff Kibre.)

Mr. Margolis: In spite of the fact that these contracts do not stop the competition in the fish, and that the fish coming in from areas where the price to the fishermen is fixed, it comes into this area and undersells fish in this area and controls the price of fish in this area.

The Court: That seems to me like it is proving the Government's case.

Mr. Rubin: And we do not at this moment need the defendants' help, with thanks.

Mr. Margolis: If we want to prove the Government's case, if it is material to that end——

Mr. Rubin: If your Honor please, the Government decides what evidence is sufficient, not the defendants.

Mr. Margolis: It is our contention that this evidence is material. We intend to argue on the basis of this evidence that actually it shows—we intend to show by this evidence that fish coming in from stabilized areas, from areas where the fisherman gets a contract price for his fish, comes in here and undersells the fish which the fisherman is forced to sell on a cutthroat basis.

The Court: How does that exculpate the defendants? [2437]

Mr. Margolis: That the stabilized agreement has no effect on consumer prices, that consumer prices are determined by other matters.

The Court: Call the jury down. I am going to sustain the objection.

Mr. Margolis: I wonder if I ought not to make an offer of proof at this time.



(Testimony of Jeff Kibre.)

The Court: Do you want to make it more formally?

Mr. Margolis: I intend to make a detailed offer of proof.

The Court: Do you want the rest of the afternoon for that?

Mr. Margolis: I think it may very well take it.

The Court: You have the jury here, why not put on some evidence so we will not waste their time?

Mr. Margolis: All right. We will put on some more evidence.

The Court: Call the jury down.

(The jury returned to the courtroom at 2:40 o'clock, p.m.)

\* \* \*

### Direct Examination

(Continued)

By Mr. Margolis:

Q. Mr. Kibre, are you familiar with the distribution system which exists in San Pedro through which the fish which is caught by the fishermen for the fresh fish market ultimately reaches the consumer? A. Yes.

Q. Will you describe that system, please?

A. I will try and give a brief thumbnail sketch and trace through the typical pattern of fish that is landed and how ultimately it reaches the consumer.

A load of fish is landed to a dealer in San Pedro. The San Pedro dealers operate generally as pri-

(Testimony of Jeff Kibre.)

marily wholesalers, or wharfside dealers. So they generally resell that fish which they have purchased from the fishermen in San Pedro to another wholesaler. Now that might be a wholesaler downtown or it might be a wholesaler in Arizona.

In the event it is a wholesaler in Arizona, that wholesaler in Arizona may in turn be a large central distributing wholesaler, who in turn resells that to another wholesaler located in some other small community of Arizona. And that third wholesaler may then sell that fish to a retail establishment, a retail store, or to a restaurant or to some other outlet whereby it finally reaches the consumer.

Now in each stage of course of distribution there may [2439] also be a broker who handles the account for the wharfside dealer or who operates in any given city and is the medium by which the fish is resold again between various wholesalers. So the fish may pass through anywhere from two to five hands before it finally reaches the consumer.

Q. In what situation would it pass through only two hands?

A. In the event that a wharfside dealer would sell it directly to a retailer. That is the only possibility.

The Court: Or a restaurant?

The Witness: That is right, or a restaurant. And that is quite exceptional.

Q. (By Mr. Margolis): To a restaurant?

A. That is right, to a restaurant.

Q. And is that how the majority of the fish is sold?

(Testimony of Jeff Kibre.)

A. No, the majority of the fish handled by the dealers in San Pedro is resold to other wholesalers.

Q. To whom does the fisherman sell? Does he sell to anyone except the wharfside dealer?

A. They sell to the wharfside dealers.

Q. There are numerous state regulations, are there not, which regulate the method of fishing and the conduct of fishermen? A. Yes, there are.

Q. Are you familiar generally with those regulations?

A. Yes, I am familiar with the Fish and Game Code.

Q. Aren't there also other regulations and rules?

A. Yes, there are regulations which the Commission itself may promulgate on the basis of the Fish and Game Code.

Q. Have you become familiar with those regulations through participation of the Fish and Game Commission?

A. It has been one of my duties to become familiar with those regulations.

Q. Tell us very generally what restrictions there are upon the manner and places at which the fishermen may fish.

\* \* \*

The Court: The objection is overruled.

The Witness: There are several types of restrictions which affect commercial fishermen. I will try and make this very, very brief.

First is the type of gear that a fisherman may employ for the catching of certain species of fish, which is regulated by the Fish and Game Code.

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): I don't want you to go into every type of gear, but tell us generally the nature of the regulation.

A. Well, I will give you an example. In Southern California, in District 19—that is the district from the Ventura County line to the border——

Q. May I interrupt for a moment?

When you speak of District 19, what do you mean?

A. That is an area, the Fish and Game Code defines the fishing areas of California into various districts.

Q. And numbers?

A. That are numbered; yes.

Q. And you are using the term District 19 in that sense, is that correct?

A. That is correct, as defined by the Fish and Game Code.

Q. Go ahead.

A. In this district, in Southern California, a certain type of gear which is known as drag gear, or otter trawl or balloon net, is prohibited. That type of gear is used to catch what is commonly known as bottom fish, and that is entirely fresh market fish, such as sole and various types of flat fish, flounder and various types of rockfish, and most of that fish is caught by what is known as drag boat gear or balloon nets or otter trawl gear. It is a sort of a balloon dragged along the ocean floor.

The Court: That is caught up north?

The Witness: That is right.

The Court: Off of Alaska?

(Testimony of Jeff Kibre.)

The Witness: It is caught up and down the coast, with [2443] the exception of this particular area in Southern California. In Southern California that type of gear is prohibited, and the fisherman cannot employ that gear for the purpose of catching market fish in Southern California.

Q. (By Mr. Margolis): Is that type of fish caught in this area?

A. That type of fish is caught in a very limited quantity in this area.

Q. By some other gear?

A. Some of it is caught by hook and line. For example, rockfish is caught in very limited quantities in Southern California by hook and line.

Q. Will you go on with your general answer now?

A. Yes. That is the first restriction, as to the type of gear.

Q. There are other gear restrictions besides the one you have mentioned?

A. Yes. That is just an illustration.

The second type of restriction applies to where the fishermen may operate. There are certain areas of the ocean that are closed off, that are restricted and fishermen may not operate in these areas. For example, a large portion of the waters around Catalina Island are restricted to commercial fishing operations.

Q. Sport fishermen may fish in those? [2444]

A. That is correct. Only sports fishermen may fish in those closed areas, as we term them. And



(Testimony of Jeff Kibre.)

there are quite a few of those closed areas. That is the second type of restriction.

Also of course commercial fishermen are required to take out an annual license from the State Division of Fish and Game.

Q. Before you go to that, in addition to the restriction of territorial waters in which fish may be caught, are there restrictions as to time, as to seasons?

A. Yes, I was going to come to that next. The next main restriction is as to the seasons in which fishermen may catch fish, and there are quite a few of these, that is, seasons fixed by the Fish and Game Code.

One, for example, is sardines or pilchards, which is quite extensive.

Q. Can you give us any fresh market fish?

A. Salmon, which is a fresh market fish. The season for salmon in Southern California is fixed by state law. Salmon may only be taken by commercial fishermen from April 1st until September 15th.

The Court: From the ocean?

The Witness: Yes.

The Court: How about the Sacramento River?

The Witness: That is quite a headache, the Sacramento River. [2445]

The Court: They get them the year around?

The Witness: No, the season there is broken up. There are at least three seasons in the Sacramento River. Fish can be taken in the Sacramento

(Testimony of Jeff Kibre.)

River from—well, it is probably easier to give the exceptions—the exceptions, for example, are from June 15th until at the present time, September 15th, or September 10th I think it is. During that period, from June 15th until September 10th salmon cannot be taken in the Sacramento River.

Then there is a short season of about three weeks during which period the commercial fisherman may take salmon in the Sacramento River.

Q. (By Mr. Margolis): You are confining yourself to commercial fishermen, aren't you?

A. That is right. Then there is another restricted season where fishermen cannot fish and then beginning December 1st they can again take salmon in the Sacramento River. But that is just an example of how the seasons for various types of fish are fixed by state law.

Q. Are there then some species of fish in which the catch of the fish for the entire year is concentrated in a small period of time?

A. I don't quite get what the question is about.

The Court: He means the albacore season is short. [2446]

Q. (By Mr. Margolis): What I mean is this, does the fisherman fish for all species the year around and pretty much catch the same species every month so that there is an even distribution, or are there concentrations of catches of species of fish in a particular period of time?

A. Yes, very definitely. Fish runs come during certain periods, sometimes not extending over a

(Testimony of Jeff Kibre.)

period of more than 10 days or two weeks. That is what we call the peak period, the peak harvesting period. It is that time when the commercial fishermen generally harvest that particular species, during the period of the peak run.

Q. Is that fish sold to the consumer just during the 10-day period or is that fish sold all the year around?

A. That fish is sold all the year around.

The Court: In other words, it is sold to the dealer who stores it or maintains is somehow?

The Witness: That is right.

Q. (By Mr. Margolis): Then aside from the runs, there are naturally factors which control when the fisherman goes fishing?

A. Very, very definitely. As a matter of fact, the availability of fish, put it that way, is determined first of all by the general habits of the fish in so far as showing up in a particular area and, secondly, the availability of [2447] fish is also controlled by other factors such as the extent of the feed that may be available in a given area and that, in turn, that is, the feed conditions, in turn, are controlled by ocean currents, so that while we can predict generally where the fish will be and when they will be there, it doesn't always happen. In fact, this past sardine season in California, we had one of the greatest failures in history in the sense that the fish almost completely failed to show in Northern California.

(Testimony of Jeff Kibre.)

The Court: And sardines, are they feed for other fish?

The Witness: No, the sardines, to some extent are, yes, that is, to a very limited extent.

The Court: What feed do you speak of?

The Witness: The feed that I am speaking of is called plankton. It is a small germ life which abounds on the surface of the water and the majority of small fish, such as sardines or anchovies and a great many other varieties of fish feed on this plankton. This is their source of food.

The Court: And the bigger fish——

The Witness: And the bigger fish, a lot of the bigger fish, feed on the smaller fish.

Q. (By Mr. Margolis): Do some of the bigger fish also feed on the plankton? A. Yes, sir.

Q. Does the fisherman do any of these feedings or have anything to do when and where the fish will come?

A. No. Fishermen just have to take their chances with nature, that is all.

Q. Now in addition to the regulations which you have described, you started to mention license. Will you tell us about that, commercial license?

A. Yes. Each commercial fisherman, in order to fish in California waters, must take out a license from the State Division of Fish and Game. That license must be renewed annually, and the fee for that license is \$10.

The Court: Is that each man?

The Witness: Each man; yes.

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): What does that permit the fisherman to do?

A. That permits the fisherman then to engage in commercial fishing subject, of course, to the restrictions provided in the code.

Q. And there is a procedure for revoking the permit of the fisherman if he violates the code?

A. Yes, definitely.

Q. Is there any regulation of fishermen with regard to the manner in which they may dispose of their catch? [2449]

\* \* \*

The Witness: The State Fish and Game Code provides, for example, that once a fisherman catches that fish he must dispose of that fish without permitting that fish to deteriorate or spoil, and he would be guilty of a crime under the State Fish and Game Code if he permitted his fish which he has caught to deteriorate or to spoil.

Q. (By Mr. Margolis): Is there any regulation in regard to the purposes for which certain species of fish may be sold?

A. I didn't quite get that question.

Q. The use for which the fish may be caught.

The Court: Can it be ground up and sold as fertilizer, fresh fish?

The Witness: Yes. There is, for example, certain broad provisions of that kind. Sardines, the State Fish and Game Code provides that when canners take sardines, that they must produce from each ton of sardines that they receive  $13\frac{1}{2}$  cases of canned fish per ton. That is a restriction. [2450]



(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): Is fertilizer also made out of sardines? A. No.

Q. Then that is a misconception?

A. That is a misconception that we have been trying very hard to correct for a good many years. Actually from sardines a very highly concentrated and important protein food is made which is used primarily to feed chickens to produce eggs, and to some extent is used for stock feed. But actually the main use is for the poultry raisers. It has been estimated by a very famous scientist at the University of California that fishmeal, the use of fishmeal for protein food for chickens, is responsible for at least 50 per cent of the increase in egg production in recent years.

Q. Is there any regulation with respect to arrangements which a fisherman must make before he goes fishing?

A. Yes. There is an order which has been issued by the Fish and Game on the basis of the code, known as General Order 12, which requires that a fisherman can——

Mr. Dixon: If the Court please, I object to this question and answer and move that it be stricken as wholly immaterial.

The Court: This is a special order, is that your contention?

Mr. Margolis: It is one of the orders issued by the [2451] commission, the same type that the witness has been testifying to.

Mr. Rubin: I wonder if counsel has a copy of it.

(Testimony of Jeff Kibre.)

Mr. Margolis: Yes, there is a copy attached to the proposed instructions, I believe. I believe you have a copy of the proposed instructions which contains that.

The Court: By the way, while counsel is looking for that, is it the custom among fishermen to always fish for the same type of fish throughout the year?

The Witness: The same type of fish throughout the year?

The Court: Yes. For instance, Mr. Knowlton, here, does he always fish for sea bass or does he fish for sea bass for a while and whatever might be running.

The Witness: They generally fish for what is running. In other words, they may fish for three or four different species of fish in the course of an entire year. That is pretty much the pattern of the entire fishing industry.

The Court: There were a number of fishermen on the stand and one of them said he was a shark fisherman. I suppose he has to have special gear for that?

The Witness: Definitely. And he may only fish shark for about six months out of the year because there is only about six months of the year when sharks are available and when the livers are of the sufficient potency to make them commercially desirable. [2452]

The Court: So that as a general thing the fresh fish fishermen will fish different varieties of fish as the fish are running or as the season comes?

(Testimony of Jeff Kibre.)

The Witness: That is correct. It is quite comparable to a truck gardener who raises different types of vegetables for truck garden purposes throughout the course of the year. In certain months there might be radishes, then it might be tomatoes, and so forth. It is pretty much the same thing. The fisherman harvests the different species of fish as they become available.

The Court: He is limited only by his type of gear, I suppose?

The Witness: Yes, that is right.

The Court: And by certain type of gear I mean, for instance, to catch sardines you have to have a special net?

The Witness: A special sized vessel and gear.

Mr. Margolis: And by the regulations also?

The Witness: Yes. I was going to add that, by the regulations also.

The Court: As a general proposition, the sardines are not looked upon as fresh fish?

The Witness: That is correct.

The Court: In other words, they fish for the canneries?

The Witness: That is right.

The Court: A very small percentage goes into the fresh [2453] fish market?

The Witness: Yes, a very small percentage goes in, primarily for bait purposes.

Q. (By Mr. Margolis): Mr. Kibre, you have referred to General Order No. 12—

(Testimony of Jeff Kibre.)

The Court: Let me see it before you ask him any questions.

(The document referred to was passed to the Court.) [2454]

The Court: Is there a question pending?

Mr. Margolis: I started to ask a question but didn't finish.

The Court: Counsel was objecting when he asked for a copy of the order.

Q. (By Mr. Margolis): I show you the language in quotes here——

The Court: Don't read it, counsel.

Mr. Margolis: I am not going to read it, your Honor.

Q. (By Mr. Margolis): ——and I will ask you whether or not that is general order No. 12 to which you have referred. A. Yes.

Mr. Margolis: At this time, your Honor, I would like to read that regulation to the jury as a fact of which it can be introduced into evidence through the process of judicial notice. This was merely for the purpose of identifying it.

Mr. Dixon: If the court please, we object to the proffer on the ground it is immaterial and on the ground it is not the best evidence.

The Court: Objection sustained on the ground it is immaterial.

Mr. Margolis: I really want to say, your Honor, I am caught by surprise. This is just another one of the regulations and the most important of them all.

(Testimony of Jeff Kibre.)

The Court: You shouldn't be caught by surprise, because [2455] that relates to canners, this doesn't relate to fish dealers. In any event, I have made by ruling, and you are not the only one that is surprised sometimes. The appellate courts have been surprised at some of my rulings.

Mr. Margolis: If your Honor please, we would like to show this is not limited to canners.

The Court: The objection is sustained, counsel. Let's move on.

Mr. Margolis: I would like to ask this question:

Q. (By Mr. Margolis): Does General Order No. 12 apply only to canners?

Mr. Dixon: We object to that, your Honor.

The Court: On what ground?

Mr. Dixon: This witness isn't construing, or is not an official of the State——

The Court: The objection is sustained.

Q. (By Mr. Margolis): In practice is General Order No. 12——

Mr. Dixon: Same objection.

The Court: Same ruling. It is immaterial.

Mr. Margolis: I understood your Honor to say it was immaterial because it applied only to canners. We want to show it applies also to fresh market fish.

The Court: The objection is sustained. The document is immaterial. If it were material I would read it to the [2456] jury at the appropriate time.



(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): During the course of your duties as an officer of the International Union have you become familiar with the methods of catching fresh fish in the Southern California area as compared with methods used under the laws and under the seasons in other areas? A. Yes.

Q. First of all, how does the catch of fresh market fish in the Southern California area compare with the catch of fresh market fish in other areas on the Pacific Coast?

A. The catch of fresh market fish in Southern California compared with other areas is extremely low. That is, the Southern California catch of fresh fish is extremely low.

Q. Can you give us some indication?

A. Yes. It is far below that of Northern California. In fact, the total catch in the Southern California area is below that for one port in Northern California, such as the port of Eureka. As a recall the last figures for Eureka, the annual landings I think in 1946 were approximately 25,000,000 pounds. I recall that because the catch in about 1938, '39 was only 5,000,000 in Eureka, and it has steadily increased to the point where it is now 25,000,000 pounds or five times over what it was previously. That is one port.

Q. In Eureka, from what year to what year did it increase? [2457] A. Since about 1939.

Q. Since 1939 to the present time it increased from about 5,000,000 pounds to about 25,000,000 pounds? A. That's right.

(Testimony of Jeff Kibre.)

Q. What has been the situation in Southern California over that period?

A. I think the fresh market catch in Southern California has not shown any corresponding increase. It has run along pretty much the same year after year within limits of whether or not fish were available of a given species.

Q. There are variations from year to year?

A. Yes, there are variations, but the variations in Southern California has shown no decided trend up or down.

Q. Where in Northern California it has increased about five times?

A. Yes, a steady upward trend.

Q. What about the situation in an area like Seattle?

A. In Seattle the trend has been very decidedly upward since 1938 also. As I recall the figures, just for one—well, take the fresh market catch of bottom fish caught by the trawl fleet in 1938, there were about 2,000,000 pounds landed. The reason I remember that is that was the time the first agreement was negotiated. In 1946, last year, the trawl catch in Seattle was well into thirty million pounds, about 33,000,000 pounds, as I recall, in the year 1946. That [2458] is all market fish.

Q. From——

A. From about two and a half million up to 33,000,000 pounds, approximately.

Q. Since 1938?           A. About 1938.

(Testimony of Jeff Kibre.)

Q. And is that the time when the first agreement stabilizing prices for market fish was entered into? A. Yes.

Mr. Dixon: If the court please, I object to the question and I move that the answer be stricken.

The Court: Objection sustained. The answer is stricken.

Mr. Margolis: Your Honor, we think this is the basic——

The Court: I know what you think, counsel. I have listened to you, given you half days and days at a time for argument.

Mr. Margolis: For the sake of the record I want to ask another question.

Q. (By Mr. Margolis): When was the agreement for stabilizing prices for fresh market fish in Eureka entered into with reference to the period when the increase started?

Mr. Dixon: Same objection, your Honor.

The Court: Same ruling; objection sustained.

Q. (By Mr. Margolis): Does the fish that is caught in Northern California and Seattle, fresh market fish, come into [2459] this area for sale to the consumer?

A. The Los Angeles market area is a main market area for all of the ports on the West Coast, and a large proportion of the fish that is caught and handled in Northern California and Seattle is sent into this Los Angeles market area.

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): Does more or less fish come into the Los Angeles area, that is, Los Angeles County, from northern ports in California, as you have defined northern ports, north of Southern California, and from the Seattle area, than comes in by landings in the Southern California area?

A. Far more fish comes in from outside sources than is caught in Southern California.

The Court: That is fresh fish?

The Witness: Fresh fish, yes. Far more. I have talked to the dealers on that.

Q. (By Mr. Margolis): On the fish which is sold in the restaurants here, for example, is most of that fish fish which is caught in this area or fish which is caught outside of this area?

A. It is fish that is caught outside of this area.

Q. Have you examined restaurant menus to confirm that fact?      A. I certainly have.

The Court: Restaurant menus?

The Witness: All over the city, your Honor.

The Court: How can you tell—I would really like to know—where that fish came from?

The Witness: By the species you can tell very easily.

The Court: They just say “filet of sole” and you get shark.

The Witness: I will give you a very timely way of checking that.

The Court: They say “halibut steak” and you get shark.

(Testimony of Jeff Kibre.)

The Witness: I have had shark sold to me in San Diego as filet of sole, your Honor. But I would say that is not [2461] too generally practiced by some of the better restaurants.

We conducted a spot check of that, it so happens, last spring when we were trying to get a program under way, and the Fish and Wild Life Service were assisting us. I do it as a habit now. The way you can tell is by the species of fish. For example, halibut. The main supply of halibut comes from the Pacific Northwest waters, some 55,000,000 pounds are landed up there as compared with a very limited amount of California halibut, so if it is halibut in the restaurant, in general they generally specify "Pacific halibut" because California halibut, that halibut caught in Southern California is somewhat of an inferior quality, so they will generally specify "Pacific halibut," you will know that is an outside fish. Filet of sole, well, there is very little sole landed in Southern California, because drag net gear cannot be used here, so you can generally——

The Court: Why can't drag net gear be used here?

The Witness: Prohibited by the State code.

The Court: Why?

The Witness: One reason is the Continental shelf is rather narrow——

Mr. Margolis: You had better explain what you mean by that.



(Testimony of Jeff Kibre.)

The Witness: The fish that are caught by drag net gear, so-called, are what are termed bottom fish, and these are [2462] fish which actually live on the bottom of the ocean floor, they are generally caught in depths from 50 to 80 fathoms, a fathom is 6 feet, and that is in effect the Continental shelf, that is the extension of the continent into the ocean, and the——

Mr. Margolis: The ocean drops away sharply?

The Witness: Yes. The Continental shelf will in some areas of the coast extent into the ocean for a great many miles, and in other areas the Continental shelf drops off very sharply so there is not very much shallow ocean floor, or not much what we term fishing bank. In Southern California the Continental shelf drops off rather sharply, and it has always, therefore, been the contention of the scientists and Fish and Game Commission that drag net fishing should not be permitted in this area. That is one of the contentions.

Q. (By Mr. Margolis): It is a conservation measure, is that correct?           A. Yes.

Q. Because there is a limited area in which the fish are available, if you drag them out of there you will soon eliminate the fish, is that right?

A. Yes, and it would interfere with other types of fish that are not dependent upon the Continental shelf. So it is in some measure a conservation measure. In another sense it is based on the fact that the area in which fish can [2463] be cause here is somewhat restricted, so therefore they don't want



(Testimony of Jeff Kibre.)

to permit drag net gear. There may be some other reasons which I don't think would be necessary to go into, the effect on sportsmen and such. [2464]

\* \* \*

Q. Just so we can indicate for the record an example of how you can tell where certain species of fish come from, this is a menu from Al Levy's, is it not? A. That is correct.

Q. There are listed some fish and seafood on there. I wonder if you would go down the list and indicate where they come from?

\* \* \*

The Witness: Well, we have under the heading of "Fish and Seafood," the following items:

First bouillabaisse Provencale. I don't know the exact French pronunciations. But that is a fish stew actually in common language. And having eaten that just the other night in that particular restaurant, I can say that it contained rock cod filets, which are from northern California or from Seattle.

The Court: You mean it did that night?

The Witness: That is correct. But I can tell you what bouillabaisse generally contains because I make it myself. It consists generally of shellfish, and the shellfish, such [2465] as clams, would come from the northern area, Oregon and Washington, particularly Washington would be razor clams, and it would probably contain some lobster, as it did the other night, which might come from Southern California or from Mexico. The largest part of the lobsters in this area comes from Mexico. Or it

(Testimony of Jeff Kibre.)

might be lobster imported from the East Coast, so-called Maine lobster. And it would contain some filets, generally it contains rockfish filets. So most of the ingredients of bouillabaisse would come from out of the state.

Next, half broiled lobster. That might come from Southern California and it might come from Mexico, and some is flown in alive from the East Coast.

Fried eastern scallops. I don't think there is any question about that. There are no scallops of any note caught on the West Coast.

Broiled swordfish steak. That would be from Southern California.

The Court: As a matter of fact, scallops are caught in Newfoundland, are they not?

The Witness: There are some caught on the East Coast also, off the United States. Newfoundland is the main source; yes, that is correct.

Quite a few came from Japan also before the war. In fact, most of the scallops used on the West Coast came from Japan before the war. [2466]

Next is fried Louisiana shrimp. Broiled northern halibut.

The Court: Fried Louisiana shrimp, does that mean it comes from Louisiana?

The Witness: It undoubtedly comes from Louisiana. It might of course come from the Gulf of Mexico.

The Court: It might come from the west coast of Mexico also?

The Witness: That is right; Lower California.

(Testimony of Jeff Kibre.)

The Court: In fact, most of them in this area come from Mexico, do they not, the large prawn types?

The Witness: I would say most of the large prawns now used in this area come from Lower California, from the Gulf.

Q. (By Mr. Margolis): Are they caught by fishermen from this area?

The Witness: No, those are caught by native fishermen in Mexico. In fact, American fishermen are not permitted to take shrimp.

Broiled northern halibut. You see, the restaurants generally say "northern halibut" to distinguish it from California or, as I was saying, left-handed halibut, as it is termed in the trade.

Frogs legs—well, fresh shad roe, that undoubtedly would come from the Sacramento River.

The Court: Where does frog's legs come from? Are they [2467] raised commercially?

The Witness: I don't know. I know they are commercially raised in certain areas in the south, and that they are handled quite extensively, particularly by fresh fish dealers who import fish from the south.

Q. (By Mr. Margolis): By the "south" you mean south of California?

A. From Louisiana and the areas through there where the frogs are raised commercially.

Fresh shad roe undoubtedly comes from the Sacramento River.

(Testimony of Jeff Kibre.)

Steamed Finnan Haddie comes from the East Coast.

Filet of Cataline sand-dabs, well that undoubtedly is northern California sand-dabs because there are very few sand-dabs caught in Southern California because they can't use drag boat gear.

The Court: Or might it be bottom fish caught in Seattle?

The Witness: Sand-dabs aren't handled in Seattle. Sand-dabs are primarily handled in northern California from the drag nets. The dealers won't take them in Seattle. They are used mainly up in Seattle for fox feed, as I recall.

I mean, there are a few small landings of sand-dabs made in Southern California and it might possibly be that this was a Southern California fish.

Broiled Lake Superior whitefish. Well, that is from the [2468] Great Lakes.

The Court: That is, if it is Lake Superior whitefish.

The Witness: Yes, that is right.

And Paupiette of Monterey Sole, Marguery, which I recommend very highly, comes undoubtedly from northern California.

So virtually all of the fish on this menu comes from out of this area.

Q. (By Mr. Margolis): Would you say from your experience that that is typical of the sources of fish consumed here?

A. That is correct. [2469]

(Testimony of Jeff Kibre.)

Mr. Margolis: I have a set of minutes, your Honor, dated May 6, 1943, which I would like to have marked for identification as Defendants' exhibit next in order.

The Clerk: K.

(The document referred to was marked Defendants' Exhibit K for identification.) [2470]

\* \* \*

The Court: This is not a copy of the minutes which have been used in evidence partially?

Mr. Margolis: No. These minutes have not been offered by the Government either in toto or in part.

Q. Mr. Kibre, I will show you a document which has been marked Defendants' Exhibit K for identification and ask you to tell us just generally what that document is.

A. This is a meeting in Newport——

Q. Is this a meeting? A. Yes.

Q. It is minutes.

A. Minutes of a meeting; that is correct.

Q. In Newport of whom?

A. Of the fishermen members of Local 36.

Q. Was that meeting held on the date that appears on the exhibit, May 6, 1943?

A. I am quite certain it was.

The Court: May 6, 1943?

Mr. Margolis: That is correct.

The Witness: May 6, 1943.

Q. (By Mr. Margolis): Did you participate in that conference? [2471]

(Testimony of Jeff Kibre.)

A. I am sure I participated. I remember the occasion very well. I was just reading over the minutes to familiarize myself with it a little bit more.

Yes, I was present at that meeting, I am sure. I don't see that it is other than the minutes, but I remember the occasion, very, very well.

Q. It refers to officers present. Those are officers of what local? A. Of Local 36.

Q. You were not at any time an officer of Local 36? A. No.

Q. Now can you tell the circumstances which led up to that conference of May 6, 1943?

A. Yes.

Mr. Rubin: That is objected to as being ambiguous and uncertain. We can't tell what the circumstances are leading up to. It is completely unintelligible.

The Court: Objection sustained.

Q. (By Mr. Margolis): Were there any events with regard to the sale of barracuda caught by fresh market fishermen which immediately preceded the calling of that conference? [2472]

\* \* \*

The Witness: Yes.

Q. (By Mr. Margolis): Will you state what happened with regard to the sale of barracuda by fresh market fishermen—that was the Southern California area? A. That is correct.

Q. In the Southern California area just prior to the date of that conference, May 1943.



(Testimony of Jeff Kibre.)

Mr. Rubin: Your Honor please, that is objected to as being incompetent, irrelevant and immaterial, too remote. There is no foundation laid for the knowledge of this witness as to the facts that occurred there, and particularly on the first two grounds stated we urge our objection.

The Court: Let me see the minutes.

(The document referred to was passed to the Court.)

Mr. Rubin: And the further ground, if your Honor please, that the matters contained therein are self-serving. Of course the document has not been offered. I withdraw that last objection.

The Court: The objection is sustained to the question.

Q. (By Mr. Margolis): Is barracuda fishing an all-year-round operation?

A. Off the waters of Southern California?

Q. Yes. [2473] A. No.

Q. That means that it is seasonal?

A. That is right, it is a seasonal operation.

Q. When is the season?

A. The main season runs from the month of April until late in the summer. The main season is roughly April, May and June.

Q. Sometimes extending into July?

A. Yes.

Q. Barracuda is caught during other periods of the year, is it not? A. Oh, yes.

Q. What do you mean then by saying that this is the barracuda season?

(Testimony of Jeff Kibre.)

A. This is the season when a large number of small boats are engaged in catching barracuda in the local waters of Southern California.

Q. What is the relationship between the amount of fish which is caught during this season, barracuda which is caught during this season, and the amount of barracuda which is caught during the balance of the year?

A. Generally about 2 million pounds or more are caught during the spring season as compared with approximately one million pounds during the winter season from the Coast of Mexico or from Mexican waters. The main portion of the catch [2474] is caught during those months.

\* \* \*

Q. During the period that you have been an official of the International Fishermen's Union, have you been familiar with the price ranges for the sale of barracuda by fresh market fishermen in the Southern California area?

A. Only too well. [2475]

Q. During that period has there been a difference always each year between the price paid for barracuda during the season and the price paid for barracuda caught during the non-season period?

A. Yes.

Q. And what has been the nature of that difference?

Mr. Rubin: If your Honor please, the question is objected to on the ground that it is completely immaterial. I can't see any materiality as to this

(Testimony of Jeff Kibre.)

type of evidence with respect to the issues raised by the indictment and the plea to the general issue in this case whether or not barracuda brings more during one season in the on season or off season or summer season or winter season. We submit that has nothing to do with the situation of the facts charged in this particular indictment in this particular case. We submit this line of testimony is entirely immaterial.

Mr. Margolis: May I state the purpose? I think I can state it before the jury, because it is of a general nature.

The Court: If it is in connection with the matter we discussed yesterday afternoon it is immaterial.

Mr. Margolis: This is, I think, something different. I think I can state it.

The Court: What is the purpose?

Mr. Margolis: We want to show—this is preliminary to showing certain activities of the union during this period [2476] and thereafter, for the purpose of establishing the kind of an organization the union is. We submit that the only way that we can show to your Honor and to the jury the kind of an organization that the union is is by what it does, as well as, of course, by its Constitution and By-laws. But we want to show——

The Court: All right. The objection is overruled.

Mr. Margolis: May we have the question then?

(The question was read.)

(Testimony of Jeff Kibre.)

The Witness: The price in the spring-summer season is generally lower than the price in the winter season. That is, the non-local season.

The Court: When fish is scarce the price is high, in other words.

The Witness: Fish that comes in during the non-local season comes in from Mexican waters, is caught at a considerable distance.

The Court: When the fish is scarce in these water the price is high?

The Witness: Barracuda is a migratory fish and it is only available here during certain months, and then it is caught in these areas.

The Court: And the price is low?

The Witness: It is lower. But there is also the fact, you see, when the fish is caught in the winter-time it is caught [2477] down in the Gulf of Mexico or in waters off the Mexican coast, and the boats have to travel a great distance. It is a far more expensive operation in the winter months to bring the fish in. So that customarily there has been that differential in the price.

Q. (By Mr. Margolis): At this time in May of 1943 were O. P. A. ceilings in effect on barracuda? A. They were not.

Q. At that time was there a drastic drop—I will draw that. Was there a change in the price of barracuda immediately preceding the conference of May, 1943? A. Very drastic change.

Q. What happened?

(Testimony of Jeff Kibre.)

Mr. Rubin: If your Honor please, it is the same question to which your Honor sustained an objection before that it is immaterial and remote to the issues in this case.

Mr. Margolis: This is preliminary for the purpose of showing the activities that were undertaken by the union in connection with this matter. I don't see how we can explain what the union has done without laying this sort of a foundation. The union obviously must act with reference to specific situations. Unless you can explain the situation which leads up to their action, then talking about their action is simply idle, your Honor, it is just meaningless.

The Court: It will be admitted for that purpose. If [2478] it doesn't go to that purpose it will be stricken; and the objection is overruled, with the idea that this testimony is admitted only for that purpose and not to how reasonableness or unreasonableness of price or reasonableness or unreasonableness of any alleged restraint, but only to show the function that the defendants claim the defendant union performed and not the defendants.

Mr. Margolis: The defendant union and the defendants who were at that time members of the union. We will put on these other defendants who will tell when they were members of the union.

The Court: All right. It will be for that limited purpose. And if it doesn't develop that it goes to that purpose it will be stricken and further testimony along that line will be excluded.



(Testimony of Jeff Kibre.)

Mr. Margolis: Did I have a question?

(The question was read by the reporter.)

The Witness: In the space of a couple of days, as I recall, to the best of my recollection, the price dropped from 18 cent a pound, that is to the fishermen, down to around—offers were made at six or seven or eight cents a pound, and then actually they didn't even want to take any fish at any price.

Q. (By Mr. Margolis): You say actually they didn't want to take any fish at any price. I wonder if you could say [2479] what happened, what did the dealers do?

A. In Newport I was called down to Newport when that occasion arose, many of the dealers simply posted notices "No fish wanted today."

Q. Did the union at that time undertake to make any sort of an investigation with regard to the demand for barracuda on the market?

A. Yes. At that meeting in Newport to which I was called, and for several days previous to that meeting, I requested the local to make a check on the Los Angeles market conditions, and I did so myself. For example, I called the Safeway Stores, their fish buyer, and asked them whether the market for barracuda was glutted as the dealers had informed us. We also checked with Ralph's, and I know that the local union, Mr. McKittrick here, made a very extensive check of a number of retail establishments as to whether or not they were glutted with barracuda.



(Testimony of Jeff Kibre.)

Q. What did you find? A. We found——

Mr. Rubin: Just a moment. If your Honor please, it is objected to on the ground that it calls for an opinion and conclusion of the witness and it is highly conjectural. This witness hasn't qualified as an expert in that particular field. He has testified the investigation that was made. Now he is going to testify as to some broad general conclusion as to [2480] the status of the fish market at that particular time. There might have been dozens of other factors that entered into the situation as to why these dealers didn't choose to buy fish at that time. They have just put in testimony that a great deal of fish, in fact more fish came from the north than was caught offshore.

The Court: I think the objection is good. The objection is sustained.

Q. (By Mr. Margolis): Did you find that there had been—did you by your investigation determine at what price barracuda was being sold to the customer? A. Yes, we did.

Q. Did you find at that time when there was a drop in the price to——

Mr. Rubin: Just a moment, counsel. The form of the question is leading, and I will object at this time.

The Court: Yes, it is. The form of the question is leading. Objection sustained.

Q. (By Mr. Margolis): Did you find out whether or not at that time when the price to the

(Testimony of Jeff Kibre.)

fishermen dropped, as you have indicated, there was any drop on the retail market for the price of barracuda? [2481]

\* \* \*

The Court: It calls for a yes or no answer.

Q. (By Mr. Margolis): Did you find out whether or not it happened?

A. Whether there had been any drop in the retail price?

The Court: Whether or not?

The Witness: Yes, I found out, yes, definitely found out.

Q. (By Mr. Margolis): How did you find that out?

A. I found that out by checking the actual prices in retail stores as well as telephoning the fish buyer for Safeway. I went into a number of butcher markets and checked the actual prices.

Q. What did you find happened with regard to the price of barracuda at that time?

A. Barracuda was selling for——

Mr. Rubin: Just a moment, Mr. Kibre, please. That is objected to, if your Honor please, as being wholly immaterial.

The Court: Objection sustained.

Q. (By Mr. Margolis): Did you, after making this investigation with regard to—What action did you take after making this investigation with regard to the price and the demand for barracuda on the retail market? [2482]

(Testimony of Jeff Kibre.)

A. I contacted the O. P. A. and urged them to step into the situation.

Q. Who did you contact?

A. I contacted Leonard Kearns who was the head of the Food Price Division in the local Los Angeles office.

Q. Let me ask this question so that we can establish this. In all of this testimony—rather, in all of these things you were doing were you acting simply as an individual or were you acting for and on behalf of the union you represented?

A. I was acting for and in behalf of the union.

Q. All right. Now, following your contacting of the O. P. A. what other action did you take and what happened?

A. I thereupon contacted the local union and urged them, also, to contact the O. P. A. with a view toward having the O. P. A. call a conference of all the parties involved in this situation.

Q. Go on. Tell us what happened.

A. The O. P. A. thereupon did call a meeting in the Los Angeles district office of the union. At that meeting myself and Mr. McKittrick were represented, and they also asked a number of dealers, and there were also a number of dealers in attendance at this meeting, and we brought up the—

Mr. Rubin: Just a moment. I think that answers your question at that point. [2483]

Mr. Margolis: I want him to tell everything that was done pursuant to that, what the union did.

The Witness: We requested—

(Testimony of Jeff Kibre.)

Mr. Rubin: Just a moment. I don't think there is a question before this witness. He was asked what action was taken, and he said they called a conference. Now he is going into the conference.

The Court: "Tell us what happened." That is too indefinite and uncertain. Objection sustained.

Q. (By Mr. Margolis): Preliminary to the OPA conference was there a conference of the union itself? A. Yes, there was.

Mr. Margolis: May I have Exhibit K, please?

(The exhibit was handed to counsel.)

Q. (By Mr. Margolis): And does Exhibit K set forth a record of what happened at the conference which was called preliminary to the OPA conference? [2484]

\* \* \*

The Witness: The minutes of this meeting give a record of the steps that we were going to take, and also represents the action of the local union in participating in the conference with the OPA. In other words, these minutes reflect the motion on the part of the local union to elect delegates to attend this conference to be called by the OPA.

Mr. Margolis: If your Honor please, at this time we want to offer Exhibit K in evidence for the limited purpose of showing the type of activities in which the union was engaged at that time.

Mr. Dixon: If the court please, we object to it on the ground it is immaterial and within the ruling previously made by your Honor.

\* \* \*

(Testimony of Jeff Kibre.)

Mr. Rubin: If your Honor please, it is certainly remote and self-serving.

The Court: Yes, it is self-serving.

Mr. Margolis: If your Honor please, I submit——

The Court: But on occasion a document like that, a record of an organization may be admissible, and the question is whether or not this is one of those occasions. [2485]

Mr. Margolis: I think that the rule is certain books and records which are kept in the ordinary course of business are an exception to the self-serving and hearsay rule.

Mr. Rubin: We are not objecting on the ground of foundation. We submit this is part of the stipulation.

The Court: I understand both of you, I understand both of your positions.

Mr. Rubin: The minutes, if your Honor please, contain information that goes far beyond showing the purpose of this organization. We submit that is the self-serving portion of it. It may be there are certain parts of the exhibit that may be material for that purpose, but there are certainly others that go beyond.

The Court: Let me see it again.

(The document was passed to the court.)

The Court: Objection sustained.

(Testimony of Jeff Kibre.)

Mr. Margolis: I intend to offer each part separately so [2486] your Honor can rule on each part separately. Our position is this, your Honor: we want the entire exhibit to go in, which your Honor has ruled that the entire exhibit may not go in; therefore we want to offer each and every part of this exhibit separately so your Honor can determine what if any part of the exhibit we may put into evidence.

The Court: I can't see where any portion of it is material, and without putting you to the burden of offering each paragraph separately it will be deemed to have been offered separately and the objection sustained to each paragraph. Or do you object to each paragraph? Maybe you don't object.

Mr. Rubin: We most certainly do, if your Honor please. [2487]

Mr. Margolis: I wonder, if your Honor please, if we might at this time consider the rejected Exhibit K both in its entirety and each and every portion thereof as an offer of proof.

The Court: Surely. My ruling as I just made now assumed that you had offered each and every part of it altogether and each and every part of it separately.

Mr. Margolis: We want to be understood as making it now in the form of an offer of proof and ask you Honor's ruling on that offer of proof. I understand we have to make a separate offer of proof after an objection.



(Testimony of Jeff Kibre.)

The Court: The objection is sustained to the actual offer. Now you are offering to prove it?

Mr. Margolis: Yes.

The Court: I do not think it is necessary because you have offered it in evidence.

Mr. Margolis: I want my offer of proof to be not only for the limited purpose stated but in addition to the limited purpose for all of it.

The Court: The same ruling would apply. It is as immaterial and incompetent and irrelevant for one as it is for the other.

Q. (By Mr. Margolis): Now following the union meeting which has been referred to, was a meeting held with the OPA [2488] A. Yes.

Q. About when was that meeting held?

A. It was some time in May of 1943. I don't recall the exact date.

Q. Where was the meeting held?

A. The meeting was held in the Los Angeles district office of the OPA.

Q. Who was present at that meeting?

A. I was present, Mr. McKittrick was present, and several other representatives from the Newport local were present. In addition to that a number of fish dealers were present.

Q. Do you remember who they were?

A. There were several dealers from the Los Angeles wholesalers present and several from San Pedro. I am just trying to recall their names. I remember several of them, I can describe them, but I am just trying to place their names. I would

(Testimony of Jeff Kibre.)

rather hesitate to give their names. I might think of their names in a moment or two.

Q. Was somebody present for the OPA?

A. Yes. Mr. Kearns was present for the OPA. He was at that time in charge of the food price section of the OPA.

Q. In this area? A. Yes.

Q. Will you tell us what was said at that meeting and [2489] by whom?

A. We brought to the attention—

Mr. Dixon: If the Court please, I object to that as being wholly incompetent and immaterial.

The Court: Objection sustained.

\* \* \*

Q. (By Mr. Margolis): What happened with regard to the buying of barracuda by the market dealers following this meeting?

Mr. Dixon: Same objection.

The Court: Same ruling. Objection sustained.

Mr. Margolis: I will ask you Honor at this time to have marked a document entitled "Southern California Small Boat Price Conference," dated January 11, 1944, to be marked as Defendants' Exhibit L for identification.

The Clerk: L for identification.

(The document referred to was marked Defendants' Exhibit L for identification.) [2490]

Q. (By Mr. Margolis): Mr. Kibre, I show you a document which has been marked Defendants'

(Testimony of Jeff Kibre.)

Exhibit L for identification, and I want you to state whether you recognize that document.

A. I do.

Q. Will you tell us what that document is?

A. This document is the minutes of a conference of delegates from various ports in Southern California, that is, delegates from units of the union from the various ports in Southern California, Newport Beach, San Diego, Santa Monica.

Q. Held when?

A. Held in January, January 11, 1944, in the office of Local 33 in San Pedro.

Q. When you say in the office of Local 33 in San Pedro, is that the same headquarters that was being used by Local 36 at that time? A. Yes.

Q. But the headquarters belonged to Local 33, is that right? A. Local 33; yes.

Mr. Margolis: Now I think perhaps at this time, your Honor, I will offer this document. There is certain additional testimony that can only be explained after this document is in. [2491]

\* \* \*

The Court: I don't think it is admissible for a general purpose. I think it might be admissible for the special and limited purpose of going to the question of whether or not this organization, Local 36, was a marketing organization.

(Testimony of Jeff Kibre.)

Mr. Margolis: That is precisely what we have in mind when we say the type of organization it is.

The Court: The objection will be overruled and the document will be admitted for that limited and sole purpose, to be considered by the jury in that respect only.

(The document referred to was received in evidence and marked Defendants' Exhibit L.)

Mr. Margolis: I would like at this time, your Honor please, to read portions of this exhibit which will, of course, be available to the jury in its entirety. [2493]

\* \* \*

(The jury returned to the courtroom at 10:05 o'clock a.m.)

\* \* \*

Mr. Margolis: Yes, your Honor.

Your Honor please, as I stated before, I request the privilege of temporarily withdrawing Mr. Kibre from the stand to put on witnesses out of order who are under subpoena for this morning.

The Court: Very well.

\* \* \*

ALEXANDER WAISSBORD

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows: [2500]

\* \* \*

Direct Examination

By Mr. Margolis:

Q. Mr. Waissbord, you are connected with the Pacific California Fish Co., Inc., is that right?

A. That is right.

Q. In what capacity?

A. I am president of this company.

Q. That is a corporation?

A. A corporation.

Q. Are you also the manager of the company?

A. No.

Q. Do you work with the company?

A. Oh, yes.

Q. Are you familiar with the books and records of that company?

A. Yes.

Q. Do you keep those books and records and supervise them?

A. Yes.

Q. What kind of a business is the Pacific California Fish Co., Inc., engaged in?

A. It is fresh fish business.

Q. Wholesale or retail?

A. Wholesale. [2501]

Q. Where is your place of business located?

A. 512 Stanford Avenue.

Q. Los Angeles, California?

A. Los Angeles, California.

(Testimony of Alexander Waissbord.)

Q. Do you purchase fish from other dealers?

A. Yes.

Q. Among those other dealers are dealers located on the wharfside or along the shore in the Southern California area from Morro Bay south?

A. That is right.

Q. In addition do you purchase fish from other sources?

A. That is right.

Q. You were served, were you not, with a subpoena which requested you either to bring in your books showing for the years 1945 and 1946, in terms of pounds and dollars, all of the fish purchased by you from landings at ports in Southern California from Morro Bay south, and of fish purchased by you during that period from all other sources, or in lieu of that a month by month summary giving that information, isn't that right?

A. That is right.

Q. Pursuant to that have you prepared from your books certain information?

A. We prepared it, but I don't think this is exactly month by month. [2502]

Q. It is not month by month, but you prepared it on a year by year basis, is that correct?

A. Yes.

Q. I will ask you—

Mr. Margolis: Perhaps we had better have this document marked for identification first.

The Clerk: M.

(The document referred to was marked Defendants' Exhibit M for identification.)



(Testimony of Alexander Waissbord.)

Q. (By Mr. Margolis): I show you this document which has been marked M; is it a document which was prepared by you or under your supervision? A. By my bookkeeper.

Q. Did you direct your bookkeeper what to do?

A. Yes.

Q. And do you know from what information or what records that you have the information that is contained in Defendants' Exhibit M, for identification, was obtained? A. Yes.

Q. What records? A. Books.

Q. Your books showing purchases?

A. Yes.

Q. In other words, you are showing here in terms of [2503] dollars and pounds——

A. It is very hard to tell the pounds.

Q. To the extent that you are able to do so you are doing so in terms of dollars and pounds?

A. Yes.

\* \* \*

Q. I think on this I would try some leading questions. If counsel objects, why, I will change my method.

Is it true that this exhibit contains information partially in terms of dollars on fish that you received and partially in terms of pounds?

A. Yes, but I don't think that the poundage is correct, because it is very hard to make it.

Q. You don't think it is correct? A. Yes.

Q. What do you mean by saying you don't think it is correct?

(Testimony of Alexander Waissbord.)

A. The amount is absolutely correct, but the poundage—because according to the books you have not in the books the poundage, you must in one day pick all the bills to find the poundage, it is not possible.

Q. If I understand you correctly, in other words, you state that the amount in dollars is absolutely accurate. [2504]      A. Yes.

Q. But the amount in pounds is subject to error?

A. Yes.

The Court: The poundage is estimated, is it?

The Witness: Estimated, yes, that is right.

Q. (By Mr. Margolis): On top you have the first item "Total Purchases for Year 1946, 659,-805.31." Is that supposed to be dollars?

A. That is dollars. No. This is poundage.

Q. This item right here (indicating).

A. That's right.

Q. In other words, does that mean that your total purchases from all sources of fresh fish for the year 1946 was \$659,805.31?

A. That is right.

Q. Then immediately below that you have got approximately 10 per cent from Morro Bay south.

A. That is right.

Q. And the item \$65,050.01.

A. That is right.

Q. That indicates your total purchases during the year 1946—

A. From Morro Bay and south.

Q. South—

(Testimony of Alexander Waissbord.)

A. Through San Diego. [2505]

Q. Including San Diego?

A. Yes, including San Diego.

Q. Below that you have a list of names starting with Max Stevenson and then pounds opposite that, and then dollars, and then the total equalling \$65,-050.01, the same amount as the total set up above, is that right? A. Yes.

Mr. Rubin: Just a moment, Mr. Waissbord.

If your Honor please, this line of questioning is objected to. I don't see the materiality of this at all. The indictment charges a conspiracy in restraint of trade with respect to fish that was purchased by the dealers from the fishermen. This gentleman is one step removed. There is no question but what these dealers sold fish to other people, and there is no question but what other people bought fish, but I can't see how this line of testimony is material at all to the issue in this case in the slightest.

The Court: Counsel in his opening statement indicated that one of the items of defense on which they would rely, while he didn't couch it in those terms, was the amount of fish caught was trivial compared to the amount consumed in this area. If I understood him, that is what he intended to say.

Was it, Mr. Andersen?

Mr. Andersen: Yes. [2506]

Mr. Margolis: Was not substantial.

The Court: Was not substantial. I take it this goes to the defendants' position that the amount of

(Testimony of Alexander Waissbord.)

fish caught here by the fresh fish fishermen is not substantial, and that most of the fish that is consumed in this area comes from other areas and thus there couldn't be any restraint of trade. [2507]

\* \* \*

Mr. Rubin: This might go in subject to a motion to strike and after the jury retires we might re-argue it.

The Court: I think so.

Mr. Rubin: Then may this evidence go in subject to our motion to strike?

The Court: It may go in over your objection on the ground that it is immaterial, which is overruled, without prejudice, however, to a motion to strike it.

Mr. Rubin: Very well.

The Court: And all of the testimony which the defendants offer in that connection, that is, in support of their proposition that I have indicated here, that the majority of fish comes from elsewhere and that the amount of fresh fish is not [2508] substantial would be subject to your same objection and subject to the same ruling.

Mr. Rubin: Yes, your Honor. Thank you.

Q. (By Mr. Margolis): Mr. Waissbord, I think I will restate the last question.

The Court: Pardon me, counsel. If I may see that document I may be better able to rule on it.

(The document referred to was passed to the Court.)

Q. (By Mr. Margolis): Immediately below the first two items which I read you have a list of names,

(Testimony of Alexander Waissbord.)

Max Stevenson, Castagnola Brothers, are those the companies located south of Morro Bay in California from whom you buy fish?      A. That is right.

Q. And you have itemized it according to what you bought from each company for the year 1946 and the total is \$65,050.01, to which I have previously referred?      A. That is right.

Q. Now you also have total purchases for 1945, \$296,242.71?      A. Yes.

Q. Approximately 10 per cent from Morro Bay south, or \$29,014.20?      A. That is right. [2509]

Q. And the information was obtained in the same way?      A. That is right.

Q. And the dealers are the same dealers referred to previously?      A. Yes.

Mr. Margolis: I will offer Defendants' Exhibit M for identification in evidence.

Mr. Rubin: Subject to our objection.

The Court: It will be marked for identification. I will not rule on it at this time. [2510]

\* \* \*

Mr. Margolis: You may cross-examine.

### Cross-Examination

By Mr. Dixon:

Q. Mr. Waissbord, in making up this compilation, Exhibit M for identification, I notice that you refer to the poundage of fish bought from certain companies named thereon. Did you examine your books to determine what types of fish or what kind

(Testimony of Alexander Waissbord.)

of fish was included in these poundage figures contained opposite the name of the concern from whom you say [2511] you purchased the fish?

A. No.

Q. You did not?

A. No, there was no time. It was only one day's time and was not possible.

\* \* \*

Q. Now I take it you purchased all types of fresh fish, is that right?

A. That is right.

Q. And you purchase a good portion of it from outside the State of California?

A. That is right.

The Court: Do you specialize in that type of fish?

The Witness: Yes; we have fresh fish.

The Court: I mean, do you specialize in fish that is caught out of California?

The Witness: Yes.

Q. (By Mr. Dixon): Can you tell the jury what types of fish you buy outside of the State of California that is included in the total amount of your purchases during the year?

A. Certainly. Salmon, halibut, black cod, ling cod, [2512] shrimps, crab meat—I think that is all. Oysters.

Q. Are those the same type of fish or class of fish that you buy from the companies that are named here on your Exhibit M?

A. No, it is different.



(Testimony of Alexander Waissbord.)

Q. They are different? A. Yes.

Mr. Dixon: That is all.

Mr. Margolis: Just one question.

### Redirect Examination

By Mr Margolis:

Q. You said that you specialize in types of fish that are not caught in the Southern California area?

A. That is right.

Q. Do you know whether your position with regard to that specialization is any different from all of the other fish dealers in this area?

A. No, I don't think so.

Mr. Margolis: That is all.

\* \* \*

### MRS. HAZEL V. MARRY

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

\* \* \*

### Direct Examination

By Mr. Margolis:

Q. I wonder if you would mind stating your name again? A. Mrs. Marry; M-a-r-r-y.

Q. And you are connected with what company?

A. Holly Seafood Company.

Q. In what capacity?

A. Well, I do all the book work, and I am also a partner. My husband and I own the business.

(Testimony of Mrs. Hazel V. Marry.)

Q. You are a partner and in charge of the books, is that right? A. Yes.

Q. Where is that company located? [2514]

A. 414 Stanford Avenue.

Q. In Los Angeles? A. In Los Angeles.

Q. What type of business is your company engaged in?

A. It is wholesale seafood, both frozen and fresh.

Q. From what sources do you purchase fish?

A. All over the country, from Boston, from Seattle, from any place in the country, I guess, and in Mexico as well.

Q. Do you also purchase fish that is landed at various points from Morro Bay south in California?

A. Yes, through other houses. We don't purchase direct from the fishermen.

Q. You purchase from dealers who are located on the shore? A. That is correct.

Q. And who in turn sell to you, is that right?

A. Yes.

Q. Now you were served, were you not, with a subpoena which requested you either to bring in all of your books and records for the years 1945 and 1946 showing the amount of purchases by you in terms of pounds and dollars, (a) fish landed in ports in Southern California from Morro Bay south, and (b) fish from all other places and sources, or in lieu of your books a month by month summary of that information? A. Yes, sir. [2515]

Q. Have you brought in either of those?

(Testimony of Mrs. Hazel V. Marry.)

A. I have a dollars and cents purchases in total, but not with just the Morro Bay separate, I mean from there on south. It is impossible to get that in one day's time, and I had the notice yesterday after 11:00 o'clock and I couldn't possibly get that out of the records. This is the total purchases of every kind of fish for the two years.

The Court: That will be marked N for identification.

Mr. Margolis: It isn't what we asked for and doesn't particularly show anything as far as we are concerned.

(The document referred to was marked Defendant's Exhibit N for identification.)

Q. (By Mr. Margolis): This shows all of your purchases of fish for the years 1945 and 1946 on a month to month basis, whether purchased from the Southern California area that I have referred to or from any other source, is that correct?

A. Correct. I had insufficient time to get any breakdown of the local.

Mr. Rubin: If your Honor please, before the witness is examined with respect to the contents of the document, and in connection with our running objection, may I suggest that the document possibly be offered, and then the document of course will speak for itself. If it is stricken it won't be necessary to have any testimony from it before the jury. In other words, if there is simply going to be testimony of what is contained in the document, the document is self-explanatory.

(Testimony of Mrs. Hazel V. Marry.)

Mr. Kenny: We haven't seen these documents until the witnesses bring them in, and we at least need an explanation even if the government thinks the jury doesn't.

The Court: This document is almost self-explanatory.

How long have you been the bookkeeper down there, active in the business?

The Witness: Twenty some years.

The Court: Are you able to tell, without making a detailed examination of your books—this is all subject to your objection, but I have in mind saving the witness' time, [2517] as well as everybody else's, possibly—are you able to tell from your experience down there what percentage of your business consists of fresh fish bought from local dealers?

The Witness: I wouldn't be in a position to state that for the simple reason that I never have checked it, and I wouldn't want to give a false statement.

The Court: You never have checked?

The Witness: I never have checked to find what percentage was local and what was nation-wide.

The Court: I mean outside of the dealers from Morro Bay south.

The Witness: I never have made a check on it.

Q. (By Mr. Margolis): You have no idea at all?

A. No conception at all of it. I wouldn't know, because a comparison with the total fish, I imagine it would run rather small, I don't know. We do

(Testimony of Mrs. Hazel V. Marry.)

use an awful lot of local fish and always have, because we specialize in fresh fish and we try to get the freshest fish we can, and naturally the local fish is the freshest.

Q. And you use a lot of that, but it is still small in comparison with the total, is that right?

A. I would imagine it would be. I can't definitely state.

Mr. Margolis: I think, your Honor, I would like to [2518] save the witness as much trouble, too, as possible, but I doubt whether this testimony——

The Court: It doesn't prove anything about anything.

Mr. Margolis: That is right.

The Witness: I being alone and only having one other help I couldn't go back and get all of that.

Q. (By Mr. Margolis): It would be available for somebody to check it?

A. If you wish it.

Mr. Margolis: Thank you very much.

I offer Defendants' Exhibit N.

The Court: It will be marked for identification, and I will reserve ruling on it.

(The document referred to was marked Defendants' Exhibit N for identification.)

Mr. Margolis: You may cross examine.

Mr. Dixon: No cross examination.

Mr. Margolis: May I ask your Honor with the understanding that we are going to be permitted to examine the books that the witness be excused

(Testimony of Mrs. Hazel V. Marry.)

to be returned later at the request of counsel if it is necessary to lay a further foundation as to the sources which were used?

The Court: That is up to the witness. She can either bring her books up here, or if you desire she can herself gather the data, or she can permit someone else to gather the [2519] data, but I do not wish to make any witness be under compulsion of letting somebody go in and have free access to all their books.

Mr. Margolis: Our position is simply this: We are perfectly willing to have the witness prepare the data. However, if the witness desires it, and if it will be in the convenience of the company, we are willing to do the work. In other words, as I understood what the witness stated, she would prefer that method of having it handled. If that is not so, we certainly haven't the slightest desire to look at the books; not the slightest.

The Witness: Well, I do not myself have time to prepare any such statement as that, because it means going through every invoice for two solid years to pick up that information.

Mr. Margolis: Then you would prefer if someone would do it?

The Witness: It would have to be done that way. If you need the information it would have to be done in that way.

The Court: There isn't any other way to do it?

The Witness: No, there isn't.



(Testimony of Mrs. Hazel V. Marry.)

The Court: Do you think your husband would have some notion?

The Witness: Whether he wants somebody to come down and [2520] go through the books?

The Court: No. About what percentage of your fish is bought here.

The Witness: I never checked it.

The Court: Does he do the buying?

The Witness: Yes.

The Court: Maybe he can do it. He has been in the same business the same length of time you have?

The Witness: Yes, 20 or 21 years.

The Court: Maybe a year longer?

The Witness: Maybe so. A long time, anyway.

Mr. Margolis: Suppose we leave it this way, your Honor: The witness is subject to return and we will try to work it out to get the evidence on the basis of an estimate if we can, and if we can't, —through some other means.

The Court: Do you now know what counsel desires?

The Witness: Yes, I understand what they desire.

The Court: The percentage of fish in your business in dollars——

The Witness: That is locally caught.

The Court: Yes, that is locally caught. If your husband can give an estimate that is approximately reliable, why, he can return and I will permit him to be put on out of order so he won't need to take

(Testimony of Mrs. Hazel V. Marry.)

the time from his business. Unless he enjoys it up here. All right. You may be [2521] excused on that condition.

Mr. Rubin: If your Honor please, just before——

The Court: Did you have cross examination?

Mr. Rubin: No cross examination, except that assuming your Honor rules ultimately that the evidence is material, then we would like to call your Honor's attention to this fact: that the purchases by a secondary receiver, by a wholesaler, in other words, a purchaser——

The Court: You can argue that later.

Mr. Rubin: The dollar value would certainly be immaterial. If there is going to be any common denominator here it should be in pounds. The purchase price of the secondary receiver would have no bearing on the amount of fish that came in.

Mr. Margolis: We want as complete information as we can get into this record. It may be if we can get it in pounds we are going to get it in pounds, and if we can't, we will get it in dollars. If the government can get it in pounds and feels they can, they are welcome to do so.

The Court: The lady is excused.

You have another fish dealer here?

Mr. Margolis: Yes.

BRIGHAM GRASTIED

called as a witness by and in behalf of the defendants, having been first duly sworn, was examined and testified as [252] follows:

\* \* \*

Direct Examination

By Mr. Margolis:

Q. Mr. Grastied, I think it is fair to assume that you are from the Grastied Wholesale Fish Company. A. That's right, sir.

Q. What is your connection with that company?

A. I am manager of the company.

Q. As such do you have supervision of the books and records of the company? A. I do, sir.

Q. Where is that company located?

A. 1308 East First Street; 1308 and -10 East First Street.

Q. Is that Los Angeles?

A. That is Los Angeles.

Q. What is the nature of the business in which you are engaged?

A. We are engaged in the wholesale fish, including fresh water and seafoods, distributors. [2523]

Q. Is that fresh fish or canned fish?

A. Fresh water fish. We are a little different, probably, than some of the others, inasmuch as we have in our company fishing outfits that engage in fresh water fishing in little lakes and reservoirs for rough fish, it is called rough fish under the State Department Wild Life.

(Testimony of Brigham Grastied.)

Q. From what sources do you obtain—you are in the wholesale business, is that right?

A. That is right, sir.

Q. From what sources do you obtain the fish which you handle?

A. Better than 50 per cent of the fish that we handle are of our own catch, that is including carp, suckers, hardheads and such items that are termed rough fish in the lakes and reservoirs of California.

Q. Those are not caught in the ocean at all?

A. No. Those are in little lakes. The other 50 per cent of our fish only as of '46—prior to that time before I came down dad handled only his own merchandise, and '45 we handled no coast fish of any kind or description, but upon my entering into the business and assuming that operation I included with ours coast fish and have purchased up and down the coast since '46 such items that my business calls for.

Q. You were served with a subpoena asking that either you bring in your books and records containing certain [2524] information or a summary of that information, that information being the amount of your purchases for the years 1945 and 1946 in terms of dollars and pounds on a monthly basis, first of fish landed at Southern California ports from Morro Bay south and, second, of all other fish purchased by you, is that right?

A. That's right, sir.

Q. Have you brought in either your books or a summary?

(Testimony of Brigham Grastied.)

A. We pay and receive by invoice only. We do not keep a record, an individual record of account purchase of any of our wholesalers. We pay and receive by invoice. Those invoices I have that are in question from Morro Bay south, indicating the amount, species, price that was paid for them as the invoice was billed to us by the vendor, and the notation on there as to check number and date and amount that was paid, and I have a complete check record of 1946 of all the payments that were made for purchase of fish.

Q. Do I understand you to say that the invoices which you brought are limited to the invoices of fish landed at Morro Bay south? A. Yes, sir.

Q. How about the rest of your invoices?

A. I have that all in folders, and it would necessitate probably bringing the pick-up to bring them over, because this is just a very small amount of the fish that was [2525] purchased that my company uses, and as I say I don't have a record of that, and it would necessitate more than a day's time in getting that. My auditor was not in a position to compile that.

Q. Maybe we can get at this without the necessity of compilation if you can give us fairly reliable estimates. First of all, can you give us a pretty close figure as to the amount of fish in dollars and in pounds which you purchased during the year 1945? A. None. [2526]

Q. Can you give us that information for the year—

(Testimony of Brigham Grastied.)

A. I have purchased no fish in 1945.

Q. I see.

The Court: They sold their own fish?

The Witness: Sold our own exclusively; no coast fish of any kind.

Q. (By Mr. Margolis): Can you give us an approximation of the number of pounds of fish handled by you, your own fish?

The Court: In 1945?

Mr. Margolis: Yes.

Mr. Rubin: That is objected to as immaterial. It is fresh water fish and has no bearing on this case, all carp and sucker that they catch in lakes and rivers. He stated during 1945 they bought no ocean fish at all.

Mr. Margolis: Fish is fish.

Mr. Rubin: If the Court please, the restraint of trade here is the price of fish for fish caught in the area described in the indictment, which is the territorial waters off the coast of California and Mexico. It has no relationship at all to suckers or bass or goldfish. That has no materiality or bearing on this case at all.

Mr. Margolis: The Government has changed its position pretty considerably. It emphasizes with a great deal of emphasis in the opening statement that there was 19 or 20 [2527] million pounds of fish caught in this area and that about a million pounds came in. That was the opening statement of the Government.

The Court: The objection is overruled.



(Testimony of Brigham Grastied.)

The Witness: I can only say as here that our total sales for that year were about \$62,000 of that type of fish.

As to tonnage, I am rather at a loss except to say that that type of fish sold at an average of about 10 cents a pound.

The Court: That is retail?

The Witness: That is as we sold it out, your Honor.

The Court: You sell it to dealers?

The Witness: That is right, to other dealers.

The Court: And retail too?

The Witness: And retail establishments too.

Q. (By Mr. Margolis): So 620,000 pounds would be approximately an estimate of the fish handled by you in 1945? A. That is right.

Q. Now I wonder if you could give us the same information for the year 1946?

A. In 1946 our sales were about \$130,000, and with that we have increased considerable on the coast fish. Our carp fell off somewhat. The tonnage was less on that. As to dollars and cents, the prices that prevailed during 1946 were [2528] rather high in some items and detailed considerable amount of money, but the poundage was small.

I am not in a position at the present time, nor would I be within a few days' time, to compile any such record that would give me a tonnage as to my volume of fish.

Q. Do you have any basis for making an estimate of the average price as you did in 1945,

(Testimony of Brigham Grastied.)

whether it would be about 15 cents or perhaps the maximum range?

A. I would say our price for 1946, including our own merchandise, would run between 15 cents to 17 cents.

Q. And you said there was——

A. \$132,000, which of course is all from memory. Books are available to substantiate any figures that I give, being corrected of course.

Q. As I figure it, that would be somewhere in the neighborhood of 800,000 pounds, would that be about right?

A. That is about right.

Q. Now of that fish which you handled in 1946, could you give us any idea of what percentage was fish landed at points from Morro Bay south?

A. I would say of my purchases for coast fish that those points were less than 10 per cent of my entire purchases.

Q. Of coast fish?

A. That is right.

Q. So there would be still less—— [2529]

A. It would be still less of our entire business.

Q. Would you say it would be about in the neighborhood of 5 per cent?

A. I would say that that would be about the maximum. [2530]

\* \* \*

### Cross Examination

By Mr. Dixon:

Q. Mr. Grastied, do you buy any fish direct from the fishermen?

A. No, sir.

(Testimony of Brigham Grastied.)

Q. This type of fish that you suggested you bought from companies in this area?

A. Primarily wholesalers.

Q. Is that fish the same kind that you testified you caught yourself in your own business?

A. No, sir.

Mr. Dixon: That is all. [2531]

\* \* \*

### JEFF KIBRE

resumed the stand and testified further as follows:

#### Direct Examination

(Continued)

By Mr. Margolis:

Q. Mr. Kibre, directing your attention to Defendants' Exhibit L, which appears to be a set of minutes for the Southern California small boat price conference for January 11, 1944, that is what they are, are they not?

A. Yes, that is the minutes of a conference which I called at that time.

Q. And you were present at the conference as appears from the face of the exhibit, is that correct?

A. That is right. [2532]

\* \* \*

Q. (By Mr. Margolis): I want to direct your attention to the portion of the minutes previously referred to reading as follows:

Mr. Dixon: Let us interrupt a moment and see if we can get this document.

(Testimony of Jeff Kibre.)

“Brother Kibre explained that the meeting had been called in line with the program to work out a coastwise schedule of minimum prices on fresh fish and cannery fish caught by non-purse seine gear. Similar meeting were to be held in the various areas along the coast. The proposals from each area were then to be combined into a coastwise program. This program was laid down at the recent convention and was designed to unite all fishermen behind a single program. Then behind such united action we can establish a solid foundation for uniform prices, conditions and quality records.”

\* \* \*

Q. Now limiting it for the present then to the paragraph which I have read, will you state whether the portion that I have read to you represents the total of what you said on that subject at that time or whether it was a summary?

A. After examining it, I can assure you that it does not represent all that I said.

Q. I wonder if you would state then the substance of your statements that you made in connection with that?

Mr. Dixon: If the Court please, we regard this as immaterial for the reason that, as we understand it, the purpose for which this document was admitted, for whatever value it might have, was to indicate the activities of this [2534] particular organization, and I think now that the question is as to what further was said by Mr. Kibre, that that would be immaterial from the point of view of this document.

(Testimony of Jeff Kibre.)

The Court: I think so. Objection sustained.

Mr. Margolis: If your Honor please, what further was said is going to indicate and explain in addition the activities. That is just a summary of the activities that were being talked about at that time.

The Court: The objection is sustained, counsel. Proceed.

Mr. Margolis: Maybe I can get at it another way, your Honor.

Q. Now in that paragraph there is a reference to a program to work out a schedule of prices. Now will you tell us what you said with reference to that program?           A. Yes.

Mr. Rubin: Just a moment, Mr. Kibre.

There is another ground for objection to this type of examination, and that is even with respect to corporation minutes that are admitted for the purpose that this has been admitted, this is a document and is no less subject to the parol evidence than any other document. The rule is simply that they can explain an ambiguity, but a document which is apparent on its face and is self-explanatory and is as clear as this document is, we submit is not the subject of [2535] amplification.

The Court: Are you objecting to the question?

Mr. Rubin: We object, your Honor.

The Court: Objection sustained.

Mr. Margolis: On the ground stated, your Honor?

(Testimony of Jeff Kibre.)

The Court: On that ground, and on the further ground that it is immaterial, and on the further ground that it is self-serving.

Mr Margolis: I would like to submit authorities on that point.

The Court: I have made my ruling, counsel.

Mr. Margolis: This witness has said that these minutes do not represent everything that was said.

The Court: The objection is sustained. Proceed, counsel.

Q. (By Mr. Margolis): There is also some reference here to a coastwise program. Will you tell us what you said about the coastwise program?

Mr. Rubin: Same objection, your Honor.

The Court: Same ruling.

Q. (By Mr. Margolis): Turning to page 2, Exhibit L, under point 3, barracuda, appears the following: "It was pointed out that the 1942 price, the base generally used by the OPA——"

The Court: Counsel, is your intention to ask the same [2536] type of questions on which I have just ruled?

Mr. Margolis: Yes, the same type of question, but here I think there is greater ambiguity. Yes, I intend to ask the same type of questions, your Honor.

The Court: I think, counsel, that I have indicated my ruling on the matter and it would not be proper for you to persist in asking the same type of questions when you know it is going to be subject to the same ruling and the same objection.



(Testimony of Jeff Kibre.)

Mr. Margolis: The point is, it is not presenting anything to the jury that isn't already in evidence. This is in evidence and could be read to them.

The Court: I have made my ruling, counsel. You can read it to the jury.

Mr. Margolis: Do I understand, your Honor, that I cannot ask for an explanation of any item or for further details with regard to any item that appears in these minutes, is that the situation?

The Court: I have made my ruling on the questions that have been asked. If you maintain that there is some ambiguity there, if you will let me read the minutes and call my attention to them, then I will make my ruling on it.

Mr. Margolis: For example, I maintain that when it refers to a coastwise program and doesn't explain what that coastwise program is, that there is an ambiguity, there is [2537] something left to be explained.

The Court: Counsel, I must warn you that I have made my ruling and I do not think you should persist. You have had enough experience to know that you should not do that.

Mr. Margolis: I contend, your Honor, that there are ambiguities in every part of these minutes and I merely intend to ask these questions so that your Honor can rule. I don't know how your Honor can rule if I don't ask the questions.

The Court: You maintain that there is ambiguity there?

(Testimony of Jeff Kibre.)

Mr. Margolis: Yes, I maintain there is ambiguity in every part of these minutes.

The Court: Will you point out to my attention the particular portions you refer to?

Mr. Margolis: I intend to ask questions with regard to all of points 3 and 4.

(The document referred to was passed to the the Court.)

The Court: I do not think the question would be material. Moreover, I think the testimony of this witness would be purely self-serving.

Proceed.

Mr. Margolis: May I have those minutes, your Honor? I want to lay the foundation for an offer of proof.

Q. With regard to points 3 and 4, referring to barracuda and rockfish, on Defendants' Exhibit L, do those points set forth completely everything that was said? [2538]

A. Point 3 does not set forth everything that was said, and in fact——

Mr. Rubin: Just a moment. If your Honor please, the witness has answered the question.

Mr. Margolis: I think he should be allowed to complete his answer.

The Court: I do not think so, counsel. You are trying to do just what you said you would do in an aside when you walked in front of the jury box a moment ago, that maybe you can get it in another way. Now the objection has been sustained, counsel.

(Testimony of Jeff Kibre.)

Mr. Margolis: I am laying a foundation for the offer of proof.

The Court: I understand. The witness answered that question when he said no.

Q. (By Mr. Margolis): Is the same thing true with regard to item 4, rockfish? A. Yes.

Q. Is the same thing true with regard to every portion of these minutes?

A. Every portion that I have examined up to there, and the first page, and up to there, it certainly is. (Indicating.)

Q. Will you look at the rest of the minutes?

A. This Section 5 on halibut is true also.

Q. Just look at the rest of it, and instead of telling us section by section if it is true as to all so state.

A. Yes, I certainly agree that it is true that the entire document is in fact. [2540]

\* \* \*

(The following proceedings were had in the absence of the jury):

Mr. Margolis: Your Honor, on the question of the admissibility of these documents, we would like to have the matter determined as soon as possible, because it involves the question of bringing in some additional witnesses, maybe half a dozen additional witnesses, four or five anyway, some of whom haven't responded to subpoenas, and we want to know——

The Court: That is the document Exhibit M?

Mr. Margolis: There is Exhibit M and Exhibit N, your Honor. There are two.

(Argument and discussion of counsel reported but not transcribed.)

The Court: I have just finished reading the indictment.

I am satisfied the government's position is well taken, and the objection to the introduction of Exhibits M and N will be sustained.

Mr. Rubin: At this time we renew our motion to strike all of the evidence adduced by the witnesses and ask that the jury be instructed to disregard it.

The Court: I think the latter witness' testimony could be stricken, because I don't think she testified to anything. And the first witness, Waissbord, —we don't have Exhibit M here, do we? He didn't break it down into months. [2541]

Mr. Kenny: That is right. His figures were——

The Court: Only annually, and divided into the dealers from whom he bought fish. He is going to return with the monthly sales. I think the monthly poundage of fish which he bought coming from the fresh fish dealers in the area described in the indictment would be material and would be admissible, but none of that testimony is presently in the record, therefore I will have to strike all of his testimony.

Call the jury down.

Mr. Margolis: I understand, your Honor——

The Court: Just hold the jury back. In other words, the testimony of the Los Angeles fish dealers of the nature which you adduced this morning is not in my judgment admissible, and any testimony on the point, that is, that the total amount of fish was so much and the total fish caught down here bore a certain relationship or percentage to the total fish is not in my judgment admissible or competent in this case.

Mr. Margolis: If your Honor please, ordinarily in order to make an appropriate offer of proof it is necessary to call a witness, swear that witness, and ask him the question and have an objection sustained. Shall we go through that process?

The Court: No. Counsel, I think in connection with that matter it would be wise and better for the record if you should reduce your offer to proof to writing. [2542]

Mr. Margolis: My point is this: Will there be a stipulation that that offer of proof may be made as to each of the witnesses upon whom we rely as if they had been called to the stand?

The Court: If you will designate your witness: So-and-so if called would testify as follows:

Mr. Margolis: We can find out the name, but it would be a representative of each one of these companies. We didn't know the names of the people who were coming in today.

The Court: I understand that. So if you will have your written offer of proof, get that ready over the weekend, then we can take it item by item and pass upon it as you present it, and I will have

one before me, because it is too difficult—it is placing too much of a burden upon you to remember orally to make your offer of proof, and too much of a burden upon me to remember orally the different items which you have presented.

\* \* \*

(The jury returned to the court room)

\* \* \*

The Court: Just before the recess—not [2543] just before the recess, but there was a witness here, Mr. Waissbord, and a Mrs. Marry, and Exhibit M, for identification, and Exhibit N, for identification: Exhibit M for identification, and N for identification, the objection to them is sustained. The motion of the government to strike the testimony, all of the testimony of the witness Waissbord and all of the testimony of the witness Mrs. Marry, is granted. Their testimony is stricken from the record and you will disregard it.

Mr. Rubin: Does that refer to the witness Grastied also, if your Honor please?

The Court: And Grastied, also. The same ruling as to the witness Grastied, although he produced no exhibits in connection with his testimony.

\* \* \*

Mr. Margolis: I wish at this time to read a portion of Exhibit L. That is a defendants' exhibit which has been referred to previously, being the minutes of the Southern California Small Boat Price Conference of January 11, 1944. The entire minutes, of course, will be available to the jury.

\* \* \*



JEFF KIBRE

recalled as a witness by and in behalf of the defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Resumed)

By Mr. Margolis:

Q. Were certain cannery experiments on barracuda conducted during the year 1943, the year before this small boat price conference?

Mr. Rubin: I will do it, your Honor. I will make the objection so we might go to lunch. It is objected to on the ground that it is incompetent, irrelevant and immaterial. [2547]

\* \* \*

The Court: The objection is sustained. [2548]

\* \* \*

The Court: Call the jury down.

The Clerk: I believe we have an ex parte matter, your Honor.

Mr. Shallenberger: In a way it is, your Honor. Several of my clients, the fish dealers on the wharf in San Pedro and two from Newport Beach, have been served with subpoenas duces tecum to produce certain records at 2:00 o'clock this afternoon. At this time, representing those parties who are not parties to this action, I would like, under Rule 17(c) to make a motion at this time to quash the subpoenas duces tecum in their entirety. And I do so move, on the grounds that it is an unreasonable invasion of their right of privacy and their

business, and that the matters that are requested by said subpoenas are immaterial and irrelevant as far as the issues of this case are concerned.

(Here followed argument by counsel which was reported but not transcribed.)

The Court: I will put over this motion to quash until Friday morning at 10:00 o'clock. The persons who are here in response to the subpoena will be excused until further order of the court, if they will agree upon receiving a call from Mr. Shallenberger to respond.

Is there anyone here who does not understand that, that [2549] if you are excused this afternoon it will be necessary for you to return upon order of the court, which will be communicated to you through Mr. Shallenberger? (No response.)

(Here followed further proceedings which were reported but not transcribed.)

Mr. Margolis: If your Honor please, there is one witness here who is not represented, at least one, there may be others, by Mr. Shallenberger.

The Court: What is your name?

Mr. Martin: Bruce Martin.

The Court: And the name of your company?

Mr. Martin: Commercial Fishermen's Cooperative Association.

Mr. Margolis: We are perfectly agreeable, your Honor, to having it deemed that the same motion be made on behalf of Mr. Martin and the same ruling.

The Court: Very well. You will be excused subject to the same order.

Mr. Martin, do you wish to have the same motion made apply to you?

Mr. Martin: That is correct, sir.

The Court: Very well.

The Court will also take note of the fact that the witnesses appeared here with large boxes and suitcases. I do not know what they contained but I presume they contained [2550] records.

Very well. Call the jury down.

(The jury returned to the courtroom at 2:30 o'clock p.m.) [2551]

\* \* \*

### JEFF KIBRE

the witness on the stand at the time of recess, resumed the stand and testified further as follows:

#### Direct Examination

(Resumed)

By Mr. Margolis:

Q. In the year 1944 were there certain contracts covering the manner of purchasing fish on the part of the Santa Monica dealers entered into?

A. Yes.

Q. Were there negotiations which preceded the execution of those agreements?

A. There were.

Q. When did those negotiations begin?

A. Those negotiations began early in 1944 and proceeded until about July when the contracts were signed. [2552]

\* \* \*

(Testimony of Jeff Kibre.)

The Court: Were they between companies or between the union and the company?

\* \* \*

A. The union and fish companies.

The Court: Local 36?

The Witness: That is correct.

Q. (By Mr. Margolis): And what companies?

A. The Santa Monica Seafood Company, located on the Municipal Wharf at Santa Monica, and the Bay Fish Company, located on the Municipal Wharf at Santa Monica. I think the other one is the Bay Fish Company.

Q. You said there were negotiations between Local 36 and these two companies preceding the execution of these agreements.

A. Lengthy negotiations.

Q. Did you participate on behalf of Local 36 in those negotiations?

A. Yes, I was requested by the Santa Monica unit of Local 36 to participate in those negotiations on their behalf.

Q. Do you remember approximately when the first negotiation meeting was conducted?

A. I would say to the best of my recollection that we began negotiations around April of 1944, possibly earlier. I know that it was several months before the conclusion of the discussions.

Q. Do you remember who was present during the course of those negotiations? [2553]

A. We had a great many meetings with Mr. DiLucca from the Santa Monica Seafood Company,

(Testimony of Jeff Kibre.)

and we also had meetings with Mr. Poppinghorn from the other company, Bay Fish Company. There were also present members of the Santa Monica unit of Local 36. Mr. McKittrick was present on several occasions; myself, of course.

Q. Where did those meetings take place?

A. Most of the meetings took place right down at the wharf at Santa Monica.

Q. The place of business of the respective dealers?

A. The places of business. I think we also had a meeting, if I recall correctly, at the home of Mr. DiLucca one night; and I think, also, we had a meeting at the office of our attorneys, that is, your own office here in Los Angeles.

Q. Do you recall the matters that were taken up during those negotiations? A. Yes, I do.

Q. What were the subjects that were discussed?

A. There were three—as I recall, there were three main questions that formed the subject of the negotiations. First the settlement of actions brought against both dealers for short weight to the fishermen over a considerable period of time at Santa Monica. Secondly, the matter of installing modern weighing facilities to weigh fish which would be [2554] satisfactory to the Bureau of Weights and Measures which had investigated both companies and which had filed criminal actions against both companies. And, thirdly, the matter of a contract covering the price of mackerel to be

(Testimony of Jeff Kibre.)

delivered by the fishermen to each of the companies.

Q. Was a settlement and agreement reached on all of these matters?

A. Yes, a final settlement was made on all three of the matters.

\* \* \*

The Court: You say there was a settlement?

The Witness: That is correct.

The Court: Was it reduced to writing?

The Witness: Yes, the settlement was, as far as I know.

Q. (By Mr. Margolis): Was the entire settlement reduced [2555] to writing?

A. A portion of the settlement was in the form of a contract. The other two issues were settled. One matter, the matter of the weighing, was a matter of installing new devices satisfactory to the Bureau of Weights and Measures. That was done to the satisfaction of the local sealer of weights and measures. [2556]

\* \* \*

Q. Did you, following those contracts in Santa Monica, take any action with regard to obtaining contracts from other fish dealers located in the Southern California area?

A. Yes. At about the same time we attempted and we did—we attempted to enter into negotiations with all other fish dealers in the Southern California area.

Q. Did you at that time send out a letter to the Southern California fish dealers? A. Yes.



(Testimony of Jeff Kibre.)

Mr. Margolis: I will ask that this document be marked as Defendants' Exhibit O.

(The document referred to was marked Defendants' Exhibit O for identification.)

Q. (By Mr. Margolis): I show you a document, a photostatic copy of a document which has been marked Defendants' Exhibit O for identification, which purports to be a copy of a letter on the letterhead of International Fishermen and [2558] Allied Workers of America, dated June 5, 1944, addressed to All Southern California Fish Dealers, and ask you whether that is the letter you just referred to. A. This is. [2559]

Mr. Margolis: At this time we offer Defendants' Exhibit O for identification in evidence.

\* \* \*

The Court: He said this is offered for a limited purpose. Didn't you?

Mr. Margolis: I said it was offered for the purpose of showing the kind of an organization this was through its activity. Not that the statements in there are true, but that this what they were saying and doing at the time. [2560]

The Court: It is immaterial. Objection sustained.

\* \* \*

Q. (By Mr. Margolis): Was any other meeting arranged thereafter with the fish dealers who had not attended the [2569] meeting which had been scheduled for June 10, 1944. A. Yes.

(Testimony of Jeff Kibre.)

Mr. Dixon: May I ask whether he is referring pursuant to this letter or is this a new meeting that he is now asking about?

Mr. Margolis: This is a new meeting. I said "thereafter." We couldn't have it pursuant to this letter if it was thereafter. They didn't show up at that meeting.

Q. Where was the meeting held?

A. At the office of the Western Seafood Institute in Los Angeles.

Q. Do you remember the date? Well, let's say with respect to June 10, 1944, the date on which the meeting was scheduled which didn't materialize.

A. It was shortly thereafter. About, I should judge, about five or six days thereafter or possibly a week.

Q. Might it have been a couple of days thereafter?

A. It might have been just a few days. The meeting on June 10 was on Saturday. I am sure it was some time around the middle of the following week.

Q. Who was present at that meeting?

A. Mr. Woods, the executive secretary of the Western Seafood Institute; a Mr. Lawton who, as I understand it, was the labor advisor of the Western Seafood Institute; Mr. Livingston, of course, from the Conciliation Service; and a [2570] couple of fish dealers; a fairly large committee of about half a dozen, from Local 36.

(Testimony of Jeff Kibre.)

Q. Did you prepare a memorandum concerning that meeting immediately following it?

A. I did. [2571]

\* \* \*

Q. (By Mr. Margolis): To the extent that it is necessary, will you refresh your recollection and answer the questions concerning this meeting?

A. Yes.

Q. Give us everyone who you can remember was present at that meeting.

A. Well, as I said before, myself and a fairly large committee from Local 36, including Mr. McKittrick, Jack Holland from Santa Monica;—if it is all right to refer to this list. [2572]

Q. First give it to us without referring to the list and then you can refer to the list.

A. I recall Maury Maehl from San Pedro, a member of the committee from Local 36, a couple of the boys from San Diego—I think one of them was named Burns, if I recall correctly—and there were several others from the union whose names I certainly don't recall. In fact, I never even knew them in the first place.

Then in addition to that of course there was Mr. Al Woods, Mr. Woods who represented——

Q. You have already mentioned him. Don't repeat those you have mentioned.

A. And Mr. Lawton and Mr. Livingston. I think that was the Conciliation Service.

Q. Can you by looking at the memorandum and refreshing your recollection be more specific as to the persons who were present?

(Testimony of Jeff Kibre.)

A. I didn't get a chance to read this very far down. (Examining document.) There was a Mr. Tyre from your office, as a matter of fact, who was also with us as a legal representative.

The only other thing I could add would be this, that Mr. Woods at the outset of the meeting explained that he was there——

The Court: Just a minute now. You haven't gotten down [2573] to asking what was said yet. He just wants to know who was there.

The Witness: I was going to put it this way: Mr. Woods was actually representing 17 fish dealers. In other words, they were present through his presence.

The Court: You mean he stated that he was?

The Witness: That is correct.

Q. (By Mr. Margolis): The meeting was held, you say, at the Western Seafood Institute?

A. Yes.

Q. Do they have offices in Los Angeles?

A. Yes, they have offices in Los Angeles.

Q. And they had at that time?

A. Yes, at that time.

Q. Do you know if they still have offices in Los Angeles?

A. I don't know. I have heard recently——

Q. Don't tell us what you have heard. Just tell us what you know. Do you know?

A. Up until, I would say, as far as my own knowledge goes, up until about six months ago they had offices in Los Angeles. Since then I don't know. I never bothered to check.

(Testimony of Jeff Kibre.)

Q. Will you tell us to the best of your recollection what occurred at that meeting? [2574]

Mr. Rubin: Just a minute, Mr. Kibre.

If your Honor please, we are going to object to this line of testimony on the ground that it is self-serving. I don't know whether the document has been marked for identification or not, but if your Honor will look at it——

The Court: No, it has not. Let me see it.

(The document referred to was passed to the Court.)

Mr. Margolis: I didn't intend to offer it in evidence because I don't think it is admissible. It is a document to refresh his recollection but not to be offered.

The Court: But which will show what his recollection will be and aid me in determining whether or not it is material and admissible.

Have you finished your objection?

Mr. Dixon: As well as the objection of immateriality.

The Court: Objection sustained.

\* \* \*

Mr. Margolis: I have a document which I will ask to be marked Defendants' exhibit next in order for identification.

The Clerk: P. [2575]

(The document referred to was marked Defendants' Exhibit P for identification.)

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): Mr. Kibre, state whether or not one of the activities of Local 36 at that time was to give publicity to its members or to keep its members advised of these meetings and of the activities that were going on. A. Yes.

Q. I show you a document which has been marked—incidentally, before we get to that—was it also one of the activities of Local 36 to give press releases and public information concerning these activities and these demands?

A. At all times.

Q. Now I show you a document which has been marked Defendants' Exhibit P for identification and ask you to state what that document is.

\* \* \*

The Court: Let me see the document.

(The document referred to was passed to the Court.)

The Court: It says: "A Message to All Market Fishermen." It does not appear to bear a date. Do you know when it was dated?

Mr. Margolis: The date can be determined by reference [2576] to its contents, your Honor. It refers to the meeting of June 12th.

The Court: Yes, I think the document speaks for itself as to what it is. I will read this while I have it here because I apprehend that you will ask some other question to which an objection will be made concerning the document.



(Testimony of Jeff Kibre.)

Mr. Margolis: I felt that it was necessary to lay a foundation by showing that it was a publication of the union, that it was circulated among the members, and then I intended to offer it. I wasn't going to have the document read, but I thought that that foundation was necessary.

The Court: I think the stipulation you made with the Government would go to this, wouldn't it?

Mr. Dixon: Yes.

The Court: That it is a document of the union circulated to the members

Mr. Dixon: Yes.

The Court: And that it is what it purports to be?

Mr. Margolis: If it is a stipulation that it is a document of Local 36 which was circulated among its membership, then I offer the document in evidence.

The Court: It is signed Southern California Market Fishermen's Committee.

Mr. Margolis: I wanted to explain what that was, your Honor. That was a committee of Local 36.

\* \* \*

Mr. Rubin: We will stipulate that the document is what it purports to be, Mr. Margolis.

Mr. Margolis: But it is necessary to do more than that. I want to establish that the committee was a committee of Local 36 and that was circulated among the membership of Local 36 and among other fishermen. Now that is what I intended to establish by my foundation, your Honor. If that foundation is stipulated to, if there is such a stipula-

(Testimony of Jeff Kibre.)

tion, I will offer it in evidence.

Mr. Rubin: We will so stipulate.

Mr. Dixon: We will so stipulate at the same time. .

The Court: All right. You offer it now?

Mr. Margolis: Yes.

Mr. Dixon: Now the objection is made, your Honor.

The Court: And the ground?

Mr. Dixon: On the ground it is immaterial and self-serving, particularly portions thereof.

Mr. Margolis: Any activity, I assume, is self-serving.

Mr. Dixon: As I understand it, your Honor, the purpose of this line of testimony is to show the nature of this organization as an aid to the jury in determining what kind of an organization it is. I submit that this kind of a document does not help in any way on that basis and therefore is wholly immaterial. [2579]

Mr. Margolis: We can show what it was by what it said and did. This is the way the local acted. It didn't act by digging ditches. This is what it did.

The Court: Objection sustained.

Q. (By Mr. Margolis): At the meeting of June 12, 1944, were arrangements made for another meeting

A. Yes.

Q. Was such a meeting held? A. Yes.

Q. By the meeting of June 12th I meant the meeting at the Western Seafood Institute.

A. That's right.

(Testimony of Jeff Kibre.)

Q. How long after June 12th was the meeting following it held, approximately?

A. The next meeting, to the best of my recollection, took place the latter part of that same week, extreme end of the week or the first of the following week. It was a very short period thereafter.

Q. And where was that meeting held?

A. That meeting was also held in the office of the—in the same office, Western Seafood.

Q. Western Seafood Institute office?

A. Yes.

Q. Who was present at that meeting?

A. Pretty much the same group: myself, Mr. McKittrick, [2580] the other members of the committee from the union, Local 36, Mr. Livingston, the conciliator, and Mr. Lawton and Mr. Woods, the executive secretary of the Western Seafood Institute.

Q. Were any individual fish dealers present at that meeting so far as you can recall?

A. As far as I can recall, Mr. Woods and Mr. Lawton stated that they represented a substantial majority of the leaders, and that the dealers had authorized them to be at this meeting and to represent them. [2581]

\* \* \*

Q. (By Mr. Margolis): At that meeting what subjects were discussed?

A. The matter of a contract between the union and the fish dealers.

(Testimony of Jeff Kibre.)

Q. At that time do you recall the substance of what was said by the various persons present?

\* \* \*

A. Yes.

Q. Will you tell us what was said?

Mr. Rubin: If your Honor please, under counsel's own [2582] avowal just a moment ago there was no agreement reached, and we submit that any conversation among the dealers and these defendants for that reason is wholly immaterial.

Mr. Margolis: There is no evidence that no agreement was reached.

The Court: The objection is sustained.

Q. (By Mr. Margolis): Was any agreement reached at that meeting? A. No.

The Court: What was the answer?

The Witness: No.

Q. (By Mr. Margolis): Subsequent to that were any other meetings held?

A. None that I know of.

Mr. Margolis: I have a letter here dated July 10, 1944, a photostatic copy, rather, that I ask be marked Exhibit Q.

(The document referred to was marked Exhibit Q for identification.)

\* \* \*

The Court: It is addressed to All Southern California Fish Dealers.

Mr. Rubin: That is correct, and that it has been mailed and so circulated.

(Testimony of Jeff Kibre.)

Mr. Margolis: To All Southern California Fish Dealers, both fish dealers located on the wharf and fish dealers located elsewhere inland in Southern California, will you stipulate to that, that copies of this letter were mailed?

Mr. Rubin: If that is your statement we will so stipulate.

Mr. Margolis: That is my statement as to what the witness would testify.

Mr. Rubin: We will so stipulate. [2585]

Mr. Margolis: I offer the letter in evidence as Defendants' Exhibit Q.

Mr. Dixon: I now object, if my previous objection has been premature.

\* \* \*

The Court: Objection sustained.

Mr. Margolis: May I have Exhibit 201, Mr. Clerk?

(The document referred to was passed to the Court.)

Mr. Margolis: At this time, if your Honor please, the defendants offer in evidence the portions of Government's Exhibit 201 which were not offered by the Government and offer it in its entirety and offer each and every part of the exhibit.

The Court: Exhibit 201 being minutes?

Mr. Margolis: Of the barracuda conference, April 18, 1946. Part of that is in evidence, your Honor. We want to offer it in its entirety.

The Court: I understand.

(Testimony of Jeff Kibre.)

Mr. Dixon: I feel that portions thereof, your Honor, that are offered are immaterial and object to it.

The Court: The objection is overruled. The document having been partially admitted, the jury are entitled to see the remainder of the document in order that they may ascertain what Justice Frankfurter refers to as the "climate."

Mr. Margolis: I wonder what we ought to do, your Honor, about the red portions?

The Court: Those are the portions that were excluded?

Mr. Margolis: No.

The Court: It was all admitted except the red marks. Do you want to read the red marked parts?

Mr. Margolis: Yes.

The Court: So that the jury will understand, there were a number of documents that were admitted in part. Some of them were admitted that had little red checks along the paragraphs, others—and this being one of the others—the portion was admitted that was not surrounded by red pencil. I have now admitted the portion surrounded by red pencil.

Mr. Margolis: I would like at this time to read to the jury these minutes of the barracuda conference, April 18, 1946, 1:30 p.m.

(At this point counsel read from Government's Exhibit 201 to the jury.)

Q. Let me stop there for a moment, Mr. Kibre, and ask you this question: Were you making this report that is referred to in this exhibit?



(Testimony of Jeff Kibre.)

A. Well, I made a very lengthy report which is covered rather sketchily in those minutes there, and in that instance there I can't quite make out exactly what is meant by the [2588] minutes that you just read.

Q. Do you recall what you said with regard to market conditions?      A. Yes.

Q. What did you say?

Mr. Rubin: Just a moment. Now, if the Court please, that is objected to as being completely self-serving, and at the conclusion of this testimony we are going to move to strike the testimony of the material which has been adduced from this exhibit.

The Court: The objection to the question is sustained.

Mr. Margolis: I will go on with the reading.

(At this point counsel read from Government's Exhibit 201 to the jury.)

Mr. Rubin: Your Honor please, at this time we move to strike that portion of Government's Exhibit No. 201 and ask the jury to disregard the same with reference to the question of Mr. Kibre's statements to his organization with respect to wages. We submit, if your Honor please, that that certainly is self-serving and is not determinative of what is or is not wages in this case. [2589]

The Court: No, it is not determinative. It is self-serving. If it were not in the document which has been partially admitted by the government it would not be admissible. But it being a part of the

(Testimony of Jeff Kibre.)

minutes which were admitted as a government's exhibit, the remainder of that document is, in my judgment, admissible, as I indicated at the time that I admitted the other document for the government. The portion, however, admitted on behalf of the defendants, and of document 201, which is encircled in red, will be a defendants' exhibit and will take a defendants' exhibit letter, and it will be Exhibit R. I guess the only thing that you can do is describe that in the record and in the minutes as Exhibit R consisting of the portion of Exhibit 201 encircled in red pencil.

Mr. Margolis: Should this also be marked with a "R," your Honor?

The Court: I suppose you could put a "R" along the side. You might make that notation, put another tag on it, Mr. Clerk.

(The document referred to was received in evidence and marked Defendants' Exhibit R.)

\* \* \*

Q. (By Mr. Margolis): Mr. Kibre, in this Exhibit 201 R there is reference to a marketing program of the union; are you familiar with that marketing program? A. Yes.

\* \* \*

Q. (By Mr. Margolis): Was a marketing program adopted [2593] for the Southern California area? A. Yes.

Q. Will you tell us when action was first taken in connection with that marketing program, approximately?

(Testimony of Jeff Kibre.)

A. We began to discuss informally with the dealers in Los Angeles the possibility of an over-all marketing campaign in this area the early part of the year.

Q. The early part of what year?

A. The early part of 1946. In fact, the very first of January, and at our International Convention, which took place in the latter part of January, a resolution was adopted directing all of the affiliates up and down the entire West Coast to join with the local organization in this area to undertake a major marketing program in the Los Angeles market area.

Q. Will you tell us——

A. And meetings were held in Seattle to discuss with the dealers in that area and with the Federal Fish and Wild Life Service the possibility of launching this campaign in the Los Angeles market area, so that the meetings that took place up there were directly concerned with the possibility of undertaking a campaign in this particular market area.

Q. You say that the Fish and Wild Life Service participated in these meetings?

A. Yes, we requested the services of the Market Service [2594] Division of the Fish and Wild Life Service. That is, of their national office in Washington, D. C.

\* \* \*

Q. (By Mr. Margolis): Were any meetings held locally in which the Fish and Wild Life Service participated?           A. Yes.

(Testimony of Jeff Kibre.)

Q. When were those meetings held?

A. The first meeting was held shortly after this Barracuda Conference took place, that is, the latter part of April, here in Los Angeles at the office of one of the fish dealers. I think it was, as I recall, Central Fish and Oyster here in Los Angeles.

Q. Is that Central Fish and Oyster located——

A. Not Central Fish and Oyster. One of the major downtown dealers. I can't recall what the name of the firm was. I do recall that it took place in this office, and it [2595] was in a loft over the fish room. That is about as near as I can place it. I could find it but I can't recall the name of it.

Q. You just referred to a Barracuda Conference. Are you referring to the Barracuda Conference on April 18, 1946, the minutes of which I have just read to the jury?

A. Yes, the meeting that I was talking about took place some few days after that Barracuda Conference meeting. [2596]

Q. Now who was present at that meeting?

\* \* \*

The Witness: Those that were present, to the best of my knowledge, were as follows: First of all, Ralph Russell, who is the chief of the Market Service Division of the Fish and Wildlife Service; Harry Hinkle, from the local Fish and Wildlife Service of the local San Pedro office who puts out their market service bulletins, at least a half a dozen fish dealers, including a Mr. Puchinelli, the manager of the

(Testimony of Jeff Kibre.)

Paladini Seafood Company, Mr. Louis Bevarino, who at that time was the head of a large fish company here in Los Angeles, and another fish dealer by the name of Vitale, who handles smoked and cured fish here in Los Angeles under the trade name of Lasco, as I recall. Then there were about three or four more dealers, and there were a couple of representatives from the union.

Q. (By Mr. Margolis): In addition to yourself?

A. That is right.

Q. Tell us generally the substance of the matters taken up and discussed at that time.

A. We explained—and I stated to those present—that it was the desire of the union to undertake and initiate a marketing campaign in the Los Angeles market area which would serve to stimulate the sales of locally caught fish and also serve to stimulate the sales of fish from all other areas up and down the west coast. In other words, a program to stimulate the sale of fish. As I remarked earlier, fish is fish. That was the essence of the program.

We proposed to this group there that the market service division be called upon to supply technical experts for the [2598] purpose of holding cookery classes, demonstrations; also for the purpose of undertaking a campaign to teach butchers in the meat shops how to properly display fish, how to properly preserve fish and how to properly make sales of fish.

Also a campaign to educate the chefs in the restaurants in the Los Angeles market area as to how to



(Testimony of Jeff Kibre.)

properly prepare fish, and a number of other measures, all of which were calculated to increase the sales of fish in this area.

And we proposed that the dealers and the Fish and Wildlife Service join with the union in setting up what we proposed should be called a fishery market development committee for Los Angeles, something along those lines.

The gist of it was that we were proposing a joint marketing campaign.

Q. To be addressed to consumers of fish?

A. That is right; yes.

Q. And by "consumers" you mean the people who eat fish?

A. Yes, the people that we hoped would eat fish. We even had in mind that the mayor should declare an official fish week as a means of stimulating sales.

Mr. Russell, the chief of the market service division of the Fish and Wildlife Service, reported to us and told us that his agency had been very successful in promoting similar campaigns in several Eastern cities and that he felt that such a campaign could be highly successful in the Los Angeles [2599] market area, and further pledged the support of his agency as far as furnishing what technical help and assistance they could make available.

He stated they would make available, for example, an expert dietician who was experienced in the holding of cookery classes and demonstrations and all that sort of thing.



(Testimony of Jeff Kibre.)

The dealers expressed very keen interest in the program, and the windup of the meeting was that a subsequent meeting was to be called for about a week later at which time it was hoped to obtain a larger representation from the dealers in this area as well as representatives from the Seattle wholesalers and the Astoria wholesalers, as well as from the union in that area, to see to what extent they would cooperate in raising funds for advertising purposes as a part of this campaign.

Q. What was done? Was there another meeting held?

A. Yes, there was another meeting held the first week in May. To the best of my recollection it was around about May 5th, because it was shortly thereafter that I had to leave on an extended trip to the East, so I know it wasn't beyond about May 7th or 8th. It must have been around about May 5th or 6th.

The Court: 1946?

The Witness: 1946; that is right.

And at this meeting which took place at this time, the office of the Western Seafood Institute in Los Angeles, there [2600] was a fairly large turnout. Also at this meeting were present not only all those who had participated before, that is, Mr. Russell from the Wildlife Service, Mr. Hinkle and the fish dealers that I enumerated before, the members of the committee, but there also were present some advertising agency people who had been invited by Mr. Woods and several of the other people from the fish dealers who had been invited for the pur-

(Testimony of Jeff Kibre.)

pose of discussing the possibility of a major advertising campaign to be directed towards the consumers, a campaign such as had been put on, for example, by the California Wine Institute. In fact, I remember that one of the representatives present from the advertising agencies had been very familiar and had worked on that campaign put on by the wine institute which had really built a market for wine in this country, for California wine.

Q. (By Mr. Margolis): What, generally, was done at that meeting?

A. Again we discussed the program which I mentioned before, that is, the development of a marketing campaign in the Los Angeles market area, and at that time we discussed the idea of setting as our objective the doubling of the existing per capita consumption of fish in this area.

Q. Do you know what that is in Los Angeles?

A. Well, it was roughly at that time about seven or eight pounds per capita per year. [2601]

Q. What is it in the United States?

A. The national average is about 14 pounds per person. We felt that at the least that such a campaign could do was to stimulate sales to raise the level of consumption here in this area to a level comparable with other areas of the country. So we felt that that was a minimum goal that could be achieved.

Q. What was the final windup of the meeting?

A. The windup of the meeting was that everyone agreed to the program in principle and a

(Testimony of Jeff Kibre.)

planning committee, as I recall it, was selected. It was agreed to set up a planning committee which would include representatives from the dealers and representatives from the union. This planning committee was then to sit down and map out concrete steps that should be taken, concrete steps with regard to the arranging of funds and concrete steps with regard to the actual steps of a consumer education marketing campaign.

Also at that meeting I reported that our affiliates in the northern area, in the state of Washington, had agreed to assess themselves a very substantial amount of money to be placed at the disposal of this committee here in Los Angeles for the purpose of advertising and for the purposes of this campaign.

Q. Was this committee thereafter formed?

A. I am sure it was. [2602]

Mr. Margolis: I will ask that this letter be marked next in order.

The Clerk: S.

(The document referred to was marked Defendants' Exhibit S for identification.)

Mr. Margolis: It is a letter dated May 6, 1946, on the letterhead of the Western Seafood Institute, Inc. [2603]

\* \* \*

The Court: It will be admitted. Later you can move to strike it. The objection is overruled.

(The document referred to was received in evidence and marked Defendants' Exhibit S.)

(Testimony of Jeff Kibre.)

Mr. Margolis: Ladies and gentlemen of the jury, this is a letter which has been marked Defendants' Exhibit S, on the letterhead of Western Seafood Institute, Inc., 417 South Hill Street, Los Angeles.

The Court: This letter is admitted and offered for the purpose of showing what Local 36 did?

Mr. Margolis: That is right.

The Court: As part of its functions?

Mr. Margolis: What it did to determine what kind of an organization it is. That is the purpose of it.

The Court: All right.

Mr. Margolis: It is dated 6 May 1946, addressed to Mr. Gilbert Zafran, International Fishermen & Allied Workers of America, San Pedro, California.

(At this point counsel read Defendants' Exhibit S to the jury.)

And it is signed by H. A. Woods, Chairman.

Q. Is the name of the Mr. Woods whom you have referred to as attending this meeting H. A. Woods?      A. Yes. [2604]

\* \* \*

Q. (By Mr. Margolis): Do you know what finally came of this marketing program?

A. Well, I left shortly after this meeting, in fact, I left a couple of days after the receipt of that letter. I remember the letter coming into the office of Zafran, because I remember his showing

(Testimony of Jeff Kibre.)

it to me, and the next that I heard of the marketing program was when I talked to Mr. Ralph Russell in Washington upon my arrival there the latter part of May. I stopped in at the Fish and Wild Life Service office in Washington, Mr. Russell was there much to my surprise, I thought he was still out in Los Angeles working on this marketing program, so I asked him what had happened, and he said that he had had to come back to his Washington office, but that the local people had been delegated to assist to their fullest possible extent, and also that they had assigned a dietician to the area. Mr. Russell also told me that on the basis of what he learned after the meeting that I described took place he wasn't too enthusiastic as to the success of the program. He told me that he wasn't very optimistic as to [2605] the cooperation which would be given the program by the dealers here in Los Angeles; that only two dealers had evinced any real enthusiasm in the program after the meeting, and that the balance of them just seemed to want to forget about it and go on as they had always been operating in this area over a long period of years.

Q. Was anything further done as far as you know with regard to this program?

A. As far as I know, other than the few things that the union has been doing, such as publicizing fish through the various unions in this area, through letters and leaflets and such, I don't know anything else that came of that program.



(Testimony of Jeff Kibre.)

Q. You left Los Angeles early in May 1946, is that right?      A. Yes, that's right.

Q. And when did you return to Los Angeles?

A. Just prior to June 10th.

The Court: By the way, what date did you see Mr. Russell in Washington?

The Witness: I saw Mr. Russell the latter part of May.

The Court: Do you remember the date?

The Witness: No, I don't, your Honor. I was extremely——

The Court: Do you remember whether it was before or after the incidents described here at the commencement of [2606] your testimony?

The Witness: I didn't even know at that time that there was anything taking place here until I received a telegram about the first week in June, about June 4th or 5th in Washington from Gilbert Zafran. That is the first I heard that it was taking place. I was extremely busy.

The Court: About the distribution of the contracts, the demands, and the strike?

The Witness: Yes, I got a telegram requesting me to come out here as quickly as possible to assist them in the solution of their difficulties, as they put it, something to that effect. I was extremely busy in Washington at that time. It was the time of the negotiations involving the CMU, the Committee for Maritime Unity, and the international officers of the various maritime unions had been



(Testimony of Jeff Kibre.)

requested to be in Washington at that time and assist in the negotiations, so I was spending about 20 hours a day on those negotiations and wouldn't have a very good memory for the exact time that I went over to see Ralph Russell, because I was always dropping over there whenever I had any free time.

Q. You returned, you say, just before June 10. Was it about June 9th or 10th, around there?

A. Yes, I flew back I think it was about June 8th or 9th. I know it was on the week-end, because I spent Sunday at home and didn't show up at the office until June 10th. I [2607] didn't want anybody to know I came into the city on a Sunday, I wanted a day off for a change.

Q. When you returned did you thereafter participate in any meeting with fish dealers or representatives of fish dealers?

A. Yes.

Q. When and where was the first meeting?

A. The first meeting that I attended was Monday afternoon, June 10th, in a loft over one of the fish dealers' places on the Municipal Wharf at San Pedro.

Q. Was that Mr. Ross' place?

A. Yes, sir, I think it was his office, upstairs.

Q. I see. Who was present at that meeting besides yourself?

A. Mr. Ekdale, the attorney for the fish dealers. At least five or six fish dealers. It started out with

(Testimony of Jeff Kibre.)

a couple, and additional fish dealers kept drifting in from time to time, so that after at least a half hour, 45 minutes of the meeting, had elapsed, there must have been quite a few of them there. And, in addition, several members of the local union, that is, from Local 36, including, I recall, Mr. Zafran and several others.

Q. Do you remember specifically any of the dealers who were present?

A. Mr. Ross was there, Mr. Vitalich, those are two [2608] that I remember particularly. I don't know the names of the local dealers too well. I know those because I know Mr. Ross, to some extent, personally. I very clearly recall he was there because of what happened at the meeting.

Q. All right. Will you tell us what was said, the substance of what was said at that meeting and by whom?

A. I opened up the session on behalf of the union and told those who were present, that is, the fish dealers and Mr. Ekdale, that I had just returned to San Pedro and just discovered what the situation was, and that I was very anxious to see if an immediate settlement of the difficulties could not be arrived at, and that was the reason I had urged that this meeting take place. [2609]

JEFF KIBRE

the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Margolis:

Q. Mr. Kibre, last evening I think we were discussing the meeting of June 10, was it?

A. Correct.

Q. That you testified was being held in a loft or an office of one of the fish dealers, Mr. Ross, with a number of fish dealers, Mr. Ekdale, yourself and other representatives of the union present?

A. That is correct.

Q. Now I had asked you to state what was said by the various parties present and you had started to answer that question. Will you proceed?

A. I will attempt to give a brief summary of the substance of the discussions to the best of my recollection.

I want to explain, in connection with giving that, this meeting lasted several hours and there were a great many present and a lot of interruptions, so I will try to give, as I say, the substance to the best of my recollection.

At the outset of the meeting I explained that I had been called into the situation by the local officers of Local 36 to assist in bringing about an immediate settlement of the [2620] dispute, and that I had called up Mr. Ekdale and proposed this

(Testimony of Jeff Kibre.)

meeting with that purpose in mind. In other words, to attempt to bring about an immediate settlement of the dispute. [2621]

\* \* \*

A. I spoke for about 10 or 15 minutes, as I recall, at the outset of the meeting, so I went on and made a rather lengthy statement in behalf of the union—I am trying to relate now what I said in that statement to the best of my [2622] recollection. As I said before, I stated that I had been called in by the union to try to effect a speedy settlement of the dispute that was then in progress. I also stated and said to those present that I was surprised to find the dispute taking place, because when I had previously been in Los Angeles up until the early part of May that a program had been developing and was in process of developing designed to bring about a marketing program for fish in this area. [2623]

\* \* \*

A. (Continuing) I went on to explain and state to the dealers present at that meeting, and Mr. Ekdale, that the primary concern of the union and myself as a responsible officer of the International at that time was precisely the question of a marketing program. Since up and down the entire West Coast our fishing fleet was experiencing difficulty in selling their catches of fish, and that therefore I had been instructed by our International executive board to devote my major attention to this matter, and that on that basis I was interested

(Testimony of Jeff Kibre.)

in bringing about an immediate settlement of this particular difficulty in San Pedro, so that both our union in San Pedro and the dealers in the San Pedro area, as well as the market wholesalers in Los Angeles, could devote themselves to the matter of selling more fish.

Mr. Ekdale then said, to the best of my recollection, that he considered the situation there unfortunate, but that he felt it had gone too far to be settled.

I asked him what he meant by that.

He wasn't too clear except to say that he felt the situation had gotten out of hand. I think those were his words.

I then stated that as long as everybody involved could sit around a table and be reasonable and to discuss the problem in good faith that I saw no reason why a settlement could not be effected.

One of the dealers, I think it was Mr. Vitalich,—I remember him very clearly, he was sitting close by, a rather short chap—he broke in and said, “Why can't you call off the picket line, then?”

And I said I was sure that the picket line would be removed just as soon as the union and the committee could be convinced that the dealers were negotiating in good faith. I explained that the purpose of the picket line was to attempt to bring about negotiations on a contract, and that just as soon as the union committee could be convinced that negotiations were proceeding in good faith that I was convinced that the picket line would be removed.



(Testimony of Jeff Kibre.)

Then as I recall—I also told the dealers that as they themselves well knew that the union had been negotiating with these dealers in San Pedro since 1937 from time to time for a contract, and that sooner or later it had to come to a head, and obviously it had finally come to a head at this particular time.

Then, as I recall, Mr. Ekdale and myself got into a long discussion on legal questions. At the outset I pointed out to Mr. Ekdale that I was not a lawyer, that I was considered somewhat as a sea lawyer, as we put it in the fishing industry, but I was not a practicing attorney and that I had tried to involve Mr. Margolis in the meeting, he was acting as our attorney, but that he had been unable to attend [2626] the meeting. However, we did get into a discussion of these legal questions, and Mr. Ekdale stated that he had advised his clients, the fish dealers, that he did not see how they could possibly enter into an agreement with the fishermen to fix the prices of fish. He went on to say from his standpoint as he saw the law that any such agreement would be a violation of the Sherman Act.

I replied to that and said while I didn't have the knowledge of the law that he had and didn't profess to have, at the same time I had made some study out of sheer necessity of the Fishermen's Marketing Act, I had read Judge McColloch's decision of 1943, the decision of January 1943 when he held the contract between our Columbia River affiliate and the Columbia River Packers Association not to be in



(Testimony of Jeff Kibre.)

violation of the Sherman Act, and that I felt that that particular decision, as I explained to Ekdale, had hit the situation here in San Pedro right on the nose. That McColloch in that particular decision——

Mr. Rubin: Just a moment, Mr. Kibre.

Your Honor, this is the kind of testimony that we submit is wholly immaterial.

The Court: No. It is discussion there at that time. And the jury has understood and will understand that they are to take the law not from Mr. Kibre nor from Judge McColloch, but from me, that applies to this case.

Mr. Rubin: The most it could go to would be the intention [2627] of the parties and, as your Honor knows, the type of intent that is necessary here that we submit that that phase is immaterial, that is the basis of it. That is the only basis to which this could go is why these people did these things, and we submit that is immaterial. It is what they did do.

The Court: It is not a lawsuit, I appreciate, between the fishermen and the fish dealers. It is between the government and these defendants. But I think that this testimony is admissible. The objection is overruled.

A. (Continuing): This discussion between Mr. Ekdale and myself, I think, went on over the better part of an hour, it covered a lot of ground. I told Mr. Ekdale that I thought that McColloch's decision had hit the two issues that were involved in San Pedro. First, the matter of whether the union could

(Testimony of Jeff Kibre.)

operate under the provisions of the Fishermen's Marketing Act, and that McColloch had held that the union could be treated as a cooperative for the purposes of that act, for the purpose of marketing its fish. And, secondly, he had ruled that group bargaining for a minimum price contract between the fishermen's union representing the fishermen in the Columbia River area, and the canners, either separately or as a group, was not in violation of the criminal penalty of the Sherman Act.

I then said that the contract in San Pedro was based on [2628] those two basic premises, and that it was the position of the union that the only question in controversy in the past year or so as regards the law was the matter of the closed shop provision in the contract, and that that matter, as Mr. Ekdale knew, was now submitted to a court proceeding in San Francisco, wherein the union had voluntarily agreed to enter into a declaratory suit with the dealers up there to test that particular question, and that since that question was not involved in the San Pedro agreement we thought that there was no real issue that should prevent an amicable settlement. [2629]

I also pointed out and stated to Mr. Ekdale that the War Labor Board in the Alaska Salmon Industry cases had ruled in 1945 that the fishermen were a labor force when they were fishing for salmon, and that they had finally arrived at a directive compelling—and also the War Labor Board had ruled that the prices paid to the fishermen constituted wages, or could be treated as wages——

(Testimony of Jeff Kibre.)

Mr. Dixon: Now, if the Court please, I must rise here to object to that unless your Honor instructs the jury that the War Labor Board rulings have no effect whatever in determining any question or issue involved in this case.

The Court: That is correct. The War Labor Board does not give the jury the law applicable to this case, I am the only one who gives you the law applicable to this case. What the War Labor Board decided or what Judge McCulloch decided or what Mr. Kibre said they decided, or what Mr. Ekdale or anybody else said they decided, is completely and wholly to be disregarded by you so far as that being the law.

The Witness: I even had the decisions of the War Labor Board with me there and Mr. Ekdale said that he had seen these particular decisions from the War Labor Board and he was conversant with the cases in which the War Labor Board required the Alaska salmon industry to enter into negotiations with our affiliates in Alaska or the prices of salmon. We discussed that for some time. [2630]

Then Mr. Ekdale said, particularly with reference to the Fishermen's Marketing Act, that he thought that we did come under the act but that it was his interpretation that whereas we came under the act, that the dealers did not and that therefore the dealers might subject themselves to possible jeopardy in the event that they entered an agreement with us.

(Testimony of Jeff Kibre.)

Then I pointed out to Mr. Ekdale that the act clearly sets forth that fisheries associations can enter into marketing agreements for the purpose of marketing their fish, or for marketing the fish of their members, and that obviously the association will have to enter into agreements. I thought that that covered it.

Well, this discussion went on over a period, I would say, of over an hour or an hour and a half, so finally I said, "Look, I believe it is about time we are getting down from legalities to realities and see if we can't find a basis for settling this dispute." I said that this is what I am concerned with here, this is what the fishermen are concerned with here, and the fishermen certainly are not interested in walking this picket line out here, they are only walking this picket line for the purpose of getting a marketing agreement, and that what they are concerned with is going out and going fishing.

So then we did get down to some brass tacks discussion.

Several of the dealers broke in then and said, "Let's [2631] see if we can't arrive at some basis for settling this."

I said, "That is exactly what we are here for." I said this, then, "Is there any question as to the demands that the union has made with reference to price?" And many of the dealers, including Mr. Ross, said no, they thought the fishermen were being very reasonable, and in fact Mr. Ross said that the dealers were fully conversant with the fact that the

(Testimony of Jeff Kibre.)

fishermen had been faced with steadily rising costs of operation and they were entitled to a price such as the OPA itself, as the ceiling of the fish, particularly in view of the fact that those ceilings had been based on the average of all prices paid for the year 1942 to the fishermen and that these prices were not out of line.

Then I reiterated my request, "Why can't we get together on an agreement then?" And Mr. Ross—I am sure it was Mr. Ross—said well, he considered the program very fine, and considered the contract to be a very reasonable, a very fair contract, and he thought that the program envisioned by that program was a program that would do the industry a great deal of good, and would result in tremendous benefits, not only for the dealers but for the fishermen and for the consumers; but he said that as long as Mr. Ekdale objected, and since Mr. Ekdale was their attorney and he had a great deal of confidence in Mr. Ekdale, he couldn't see how they could possibly sign that contract. [2632]

I said, "It is not a matter of signing a particular contract that we should be concerned with, but what we are interested in is trying to work out some form of agreement here which will give the fishermen some measure of security so that they will know what they are going to get when they go out to make their catches, and that we felt that such a measure of security was indispensable to the bringing about of a sound relationship of the fishermen and the dealers in this area so that we could then go ahead on a full-fledged marketing campaign."



(Testimony of Jeff Kibre.)

Then there was general discussion all around the room, so I finally said, "Why don't we at least agree here this afternoon to come to an agreement?" I suggested that the best way to accomplish that would be for both sides to agree to set up a small committee, a couple of people from each side, to then sit down and thrash the whole thing over, discuss all the objections that the dealers had, discuss the desires of the fishermen, and see if we couldn't arrive at some reasonable basis for a settlement.

There was a great deal of discussion of that proposal on my part and finally there was substantial agreement among all those present that such a small committee should be created, and I said that I would get hold of our attorney and that we should then try to have a meeting the following morning of Mr. Ekdale, Mr. Margolis and at least two from the union and two [2633] from the dealers.

Everybody thought that was a good idea, and I then reiterated that if everybody felt along those lines that we should go out of that meeting with a feeling that we were going to reach an agreement and stick to that feeling for the next day or so and I was convinced we could settle up the entire deal.

At that time—I think it was about 4:00 o'clock in the afternoon, the meeting had started around 1:00 or 1:30—everybody was in a good frame of mind and the meeting finally broke up with everybody feeling rather happy and feeling that we had made substantial progress toward a settlement of the dispute. [2634]



(Testimony of Jeff Kibre.)

Mr. Rubin: Just a moment, if your Honor please, The form of the question is leading. He stated that that is his full recollection.

The Court: Objection sustained.

Mr. Margolis: If your Honor please, as I understand the rule, I merely want to direct the witness' attention to a particular subject. Once the witness has stated his full recollection, then I think it is correct to direct his attention to a particular subject.

The Witness: If you will give me a moment to think, maybe I can think back over the meeting. It took about three hours.

Mr. Margolis: Maybe I can reframe the question so that it won't be leading.

Q. Do you recall whether or not anything was said——

Mr. Rubin: Just a moment. That is exactly the same question and the same objection.

The Court: Objection sustained.

The Witness: Maybe I can, by taking a moment here to go back in my mind over the meeting——

The Court: There isn't any question pending.

The Witness: Pardon me.

Mr. Margolis: Let's get down to the next statement.

Q. Was there a meeting on the 11th? [2635]

A. Yes, there was a meeting the following morning quite early in the morning about 9:00 o'clock, in Mr. Ekdale's office in San Pedro.

Q. Who was present at that meeting?

(Testimony of Jeff Kibre.)

A. Mr. Margolis, our attorney, myself, Mr. Zaf-ran, and Mr. Ekdale, Mr. Ross, and I think Mr. Vitalich. I don't think Mr. Vitalich was present at the outset; I think he came in and left, or something. At any rate, Mr. Ross was there and there was one more dealer who was supposed to be there. There were supposed to be two dealers. I think it was Mr. Vitalich that came in and went out, or came in later and went out.

Q. All right. Now how long did that meeting last?

A. That meeting lasted until 12:00 o'clock. I recall that very clearly.

Q. Can you tell us what was said and done by the various persons present at that meeting?

A. At the very outset of the meeting we got into a discussion as to a possible settlement of the dispute, and Mr. Margolis suggested that we should consider—by the way, this is something I did leave out of the meeting that took place on the 10th, the previous afternoon.

There was some discussion at the meeting on Monday afternoon in Mr. Ross' office of a new agreement or a new proposed basis for an agreement that had been suggested by Mr. [2636] Margolis prior to the time of my return. It was termed a trip-by-trip agreement, and there was some discussion of that at the meeting Monday afternoon, so that when we met Tuesday morning in Mr. Ekdale's office this was the first subject that

(Testimony of Jeff Kibre.)

came up, this matter of the proposed trip agreement which have been submitted by Mr. Margolis on behalf of the union in my absence.

So that was the first matter that came up for discussion, and then as soon as that matter came up there was a long discussion between Mr. Margolis and Mr. Ekdale again on the legal questions, the Sherman Antitrust Act, the Fisheries Marketing Act, Judge McColloch's decision, and the War Labor Board decision, and the Sherman Antitrust Act and whether price agreements between the fishermen and the dealers involved consumer price-fixing, and so forth and so on. This discussion I think took place over about an hour.

I interrupted a couple of times and suggested we should get back to the proposed idea for a settlement of the agreement, but these lawyers, as they generally do, they get going and they really went on for quite a while.

The Court: I suppose they followed substantially the same ground you covered?

The Witness: That is right, except on a much higher, up-in-the-sky plane, your Honor.

So I kept interrupting and trying to get them down to [2637] earth on the proposed trip settlement.

So finally we did get down to a discussion of that, and Mr. Ekdale said that he thought that that possibly was a good basis for a settlement, and so we began to discuss that and see if we could not use that as the basis then for a settlement and work out a complete agreement.

(Testimony of Jeff Kibre.)

We then discussed the matter pro and con for some time and it was suggested by Mr. Margolis—and I think by myself—that we should use the trip agreement as the basis for settlement and then try to work out an exchange of letters which would cover the various points at issue and that such an exchange of letters should constitute a settlement of the dispute.

It was then suggested—I think, in fact, it was I that suggested it—in the interests of speeding up the matter, that we should dictate the letters right then and there. Mr. Ekdale agreed and called in his secretary and the dictation proceeded.

Mr. Ekdale would dictate, then Mr. Margolis would dictate, and then there would be consultation back and forth, and finally we dictated a fairly lengthy letter which was to be a letter sent by the union to the dealers.

Q. (By Mr. Margolis): I show you a document which has been marked Defendants' Exhibit A for identification. [2638]

\* \* \*

Q. Following the dictation of the letter which has been marked for identification as Defendants' Exhibit A, was another document dictated?

A. Yes, another letter was dictated which was to be a letter from the dealers to the union.

Q. By whom was that dictated?

A. That was dictated by Mr. Ekdale with some assistance from Mr. Margolis, as I recall.

(Testimony of Jeff Kibre.)

Q. In pretty much the same way as the first letter?

A. Yes, because both letters were to constitute an exchange of letters, one from the dealers and one from the union, and we were there to agree on what was in both letters, in fact, because we were trying to reach agreement on what would go into the letters because that would then be an agreement on immediately ending the difficulties. [2640]

Q. Is that what was said?

A. Yes, that's right. As a matter of fact, the reason for the speed there is that we had already called a meeting of the strike committee, of the San Pedro strike committee, for 1:00 o'clock that afternoon, at which we were to submit the proposed letters.

Q. I see. I show you a document which is marked Defendants' Exhibit B, for identification, and ask you to state what that is.

A. That is the letter which was to be sent to the dealers—I mean to be sent to the union.

Q. That was the second letter that was dictated, is that right?

A. That is the second letter that was dictated, and this was to be the letter from the dealers to the union.

Q. In reply to the letter marked Defendants' Exhibit A?

A. In reply to the letter.

Mr. Margolis: We offer Defendant's Exhibits A and B in evidence.



(Testimony of Jeff Kibre.)

Mr. Dixon: Same objection, your Honor, to both exhibits.

The Court: How does Local 36 act? Through an executive committee?

The Witness: Yes, your Honor. It has an executive committee [2641] which makes decisions, but those decisions must thereupon be ratified by the membership.

The Court: Had the executive committee conferred power upon you to act for them in that connection?

The Witness: The manner in which that operates, your Honor, is this: That when the strike started the membership had set up a strike committee, and it authorized that strike committee to act as a negotiating committee and to enter into such negotiations as the strike committee deemed necessary.

The Court: On behalf of all the members?

The Witness: Precisely.

The Court: Of the union?

The Witness: Yes. And the strike committee thereupon requested me to act in their behalf.

Q. (By Mr. Margolis): Mr. Zafran was also present for the local?

A. Mr. Zafran was present during all of these discussions and actively participated.

The Court: Who was the strike committee?

The Witness: The strike committee—well, that was a committee elected by the membership.

The Court: Who were they? What were their names?



(Testimony of Jeff Kibre.)

The Witness: Mr. Zafran, Tommy here in the court room.

The Court: Mr. Sawyer? [2642]

The Witness: Mr. Sawyer, Tommy Sawyer as we call him. Smitty over here.

Q. (By Mr. Margolis): That is Mr. Smith?

The Court: H. R. Smith?

The Witness: That's right. There were about at least a dozen on the strike committee.

Q. (By Mr. Margolis): Do you remember the other names?

A. I was out of town when all of this took place.

The Court: You don't remember?

The Witness: I only had a brief meeting with the strike committee Monday morning prior to the meeting with the dealers. I had very little other than the meeting where the strike committee authorized me to meet with the dealers Monday afternoon to be the spokesman for the committee.

Q. (By Mr. Margolis): One more question: Do you know by whom Mr. Margolis was retained in that connection?

A. By Local 36. Mr. Zafran, of course, is the secretary-treasurer of the entire local, and the secretary-treasurer of the Joint Board representing the entire local.

The Court: I think that the only ground of admissibility of these would be defensively that the parties had withdrawn from whatever their agreement was before, because the allegation of the

(Testimony of Jeff Kibre.)

indictment is: beginning some time prior to May 1946 and continuing thereafter up to and including the date of the return of this indictment, which was [2643] August 25, 1946. However, I don't think sufficient foundation has been laid for that.

Mr. Margolis: We intend——

The Court: In view of his testimony just now concerning the strike committee and the powers of those persons to act on behalf of Local 36.

Mr. Margolis: I will lay more foundation.

Q. (By Mr. Margolis): Was a membership meeting of Local 36 held that evening in San Pedro?

A. There was a meeting of the strike committee in the afternoon of Tuesday.

Q. Was there a membership meeting in the evening?

A. There was a membership meeting subsequent to the meeting of the strike committee. There was also a series of membership meeting of all the units. [2644]

\* \* \*

Mr. Margolis: If your Honor please, at this time I want to offer in evidence that portion of Government's Exhibit 313 which was not admitted at the time that the government offered the exhibit, rather, which was excluded by the government in its offer.

The Court: I think this portion which is excluded is admissible, whether it is surrounded by light red or heavy red. [2645]

\* \* \*

(Testimony of Jeff Kibre.)

The Court: Yes, defendants' T will be all the portions enclosed in light and heavy red in Government's Exhibit 313.

Mr. Margolis: I think the light red is in.

(The document referred to was received as indicated and marked Defendants' Exhibit T.)

\* \* \*

Q. (By Mr. Margolis): I show you Government's Exhibit 313 and Defendants' Exhibit T, and I direct particularly your attention to that portion of the exhibit encircled in dark red—first of all, before doing that, those are meetings of the strike committee on June 11, 1946, is that right?

A. That's right.

The Court: Were you present?

Q. (By Mr. Margolis): Were you present at that meeting?

A. Yes, I was present at all the meetings after this proposal was worked out.

The Court: Were you present at that meeting?

A. Yes.

Q. (By Mr. Margolis): Were you present at that meeting?

A. That's right.

Q. I direct your attention particularly, then, to the portion encircled in dark red, which is now Defendants' Exhibit T, and the subsequent portion of this reading as follows:

“Discussion and reading of the proposal tentatively accepted by the San Pedro dealers. General discussion on the merits of the pro-

(Testimony of Jeff Kibre.)

posal. Moved, [2647] seconded That we concur in the Joint Council recommendation regards pulling pickets upon receipt of the accepting markets signature. Carried."

Were you present when that discussion took place?        A. Yes.

Q. Will you tell us what the discussion was about?

A. The discussion was about the proposed agreements in the form of the letters that had been drafted, and further that I had——

Q. The proposed letters, just so we can tie them in here, are you referring to the proposed letters that have been marked Defendants' Exhibits A and B for identification?

A. Yes, sir, that's right.

Q. Go ahead with your answer.

A. I gave the committee a full explanation of these letters and recommended to the committee that they accept a settlement based on these letters, and that picket lines immediately be withdrawn.

Q. Do you know whether or not subsequent to this the letter marked Defendants' Exhibit A was executed by the union?

A. Yes, the letter was.

Q. And was it sent to the dealers?

A. A letter was delivered to each of the dealers.

Q. Executed by the union? [2648]

A. Executed by the local union.

(Testimony of Jeff Kibre.)

Mr. Margolis: We renew our offer, your Honor, of Defendants' Exhibits A and B.

Mr. Rubin: We would like to take him on voir dire as to Exhibit B.

\* \* \*

Voir Dire Examination

By Mr. Rubin:

Q. Mr. Kibre, as to Defendants' Exhibit B which the record shows is the responding letter to this letter, was that ever executed by the fish dealers?

A. I don't think that the union received a signed copy of that letter.

Q. Do you know whether or not it was ever executed by the fish dealers?

A. I said we did not receive a signed copy.

Q. That isn't the question. Do you know whether or not it was ever executed by the fish dealers?

A. I don't think it was. [2649]

\* \* \*

The jury returned to the courtroom at 11:45 o'clock a.m.)

\* \* \*

Mr. Margolis: Your Honor please, has the ruling been made on A and B?

The Court: Documents A and B for identification are admitted in evidence.

(The documents referred to were received in evidence and marked Defendants' Exhibits A and B respectively.) [2653]

\* \* \*

(Testimony of Jeff Kibre.)

The Court: These documents are offered in evidence and are admitted in evidence, ladies and gentlemen of the jury, for three purposes: First, with relation to the defendant Kibre personally and his connection with the alleged conspiracy and conduct, secondly, with relation to the defendants' contention as to what their purpose and object of the conspiracy was and, thirdly, to show that there was an abandonment of the conspiracy during the period of time that the government alleges to have existed.

When I say they are offered for that purpose, it is up to you to determine and weigh them to see whether or not, in your judgment, they do prove, as all other evidence must be weighed by you.

Mr. Margolis: At the appropriate time we will argue what we intend by these documents.

The Court: The parties at the end of the case will be given ample opportunity to argue the evidence to you.

Mr. Margolis: Defendants' Exhibit A is a letter dated June 11, 1946, addressed to the fresh fish dealers of the port of San Pedro and reads as follows:

(At this point counsel read Defendants' Exhibit A to the jury.) [2654]

Then, ladies and gentlemen, Exhibit B, Defendants' Exhibit B, the second letter testified to by Mr. Kibre is likewise dated June 11, 1946, and is



(Testimony of Jeff Kibre.)

addressed: "International Fishermen and Allied Workers, Attention Local 36, Berth 73, San Pedro, California."

\* \* \*

(Whereupon Mr. Margolis read Defendants' Exhibit B to the jury.)

Direct Examination

(Resumed)

By Mr. Margolis:

Q. These are the two letters, Mr. Kibre, which were [2655] dictated as you have described. Now, following the dictation of those letters was there any further conversation? A. Yes.

Q. Will you tell us what was said?

A. Mr. Ekdale expressed himself, stated that he was completely satisfied with the proposed agreement that is embodied in the letter, and said, further, that he was completely satisfied that the type of agreement contained in the letters was not in violation with the Sherman Act as he understood it.

Q. Was there anything further that you recall?

A. What was that?

Q. Was there anything further that you recall of the conversation?

A. Mr. Ekdale stated that he was satisfied and felt very happy about the outcome of the negotiations and was quite certain that the dealers would accept the proposals.

Q. Were there any arrangements made with regard to what was to be done with the two letters?

(Testimony of Jeff Kibre.)

A. Yes, the letters were to be immediately typed up, and we made arrangements for Gilbert Zafran to pick up our letter,—that is, the letters were to be typed in the office there, and we made arrangements for Gilbert Zafran to pick up our letter and to bring it to the union office by 1:00 o'clock so we could submit it to the committee. And the [2656] dealers, in turn, as Mr. Ekdale stated, would hold a meeting immediately to ratify their letter and convey it to us.

Q. Did you subsequently receive a letter from the dealers with relation to this matter?

A. Yes, we did, after several days.

Q. Was it the letter which is in evidence as Defendants' Exhibit B?      A. No.

Q. I show you a letter which has been marked as Defendants' Exhibit C, for identification, and ask you if you know what that letter is.

Mr. Rubin: We will stipulate to the foundation, Mr. Margolis.

A. This is the letter that was received near the end of the week from the fish dealers.

Mr. Margolis: If your Honor please, at this time we offer Defendants' Exhibit C, for identification, in evidence.

Mr. Dixon: No objection.

The Court: Admitted.

(The document referred to was received in evidence and marked Defendants' Exhibit C.)

(Testimony of Jeff Kibre.)

Mr. Margolis: I want to read the letter. It will take several minutes to read. Shall we do it before or after lunch?

Mr. Rubin: May be have it read now, if your Honor please? [2657] It is part of the series of these other two letters.

\* \* \*

Mr. Margolis: Before reading the letter I see there is one matter I overlooked.

At this time, your Honor, I would like to offer in evidence those portions of Govenment's Exhibit 224 which were omitted by the government in its offer of that exhibit.

The Court: Any objection?

Mr. Dixon: No, your Honor.

The Court: Admitted. That will be the next letter.

The Clerk: U.

(The portions of the document referred to were received in evidence and marked Defendants' Exhibit U.)

Mr. Margolis: I would like to read from the portions of Exhibit 224 which were just admitted into evidence and which are now Defendants' Exhibit U. This is dated June 12, 1946.

(Whereupon counsel read the portion referred to marked Defendants' Exhibit U.)

## JEFF KIBRE

called as a witness by and in behalf of the defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination  
(Resumed)

By Mr. Margolis:

Q. The reference there is to Defendants' Exhibits A and B?

A. Yes, the letters that were discussed.

Q. Just before the session adjourned this morning, you had testified concerning the receipt of, I believe, a reply from the dealers which was different from the reply which had been drafted in Mr. Ekdale's office on June 12th.

A. That is right.

Q. And that is in evidence as Defendants' Exhibit C, and at this time I would like to read it to the jury.

It is dated 14 June 1946, addressed to International Fishermen and Allied Workers, attention Local 36, Berth 73, San Pedro, California. Gentlemen: Reference is made to your letter of June 11, 1946——

If I may pause there, the letter of June 11, 1946, had previously been sent signed to the dealers, is that right?

A. That's right.

(Whereupon Mr. Margolis read Defendants' Exhibit C to the jury.) [2662]

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): Following the receipt of that letter was another union meeting held at which you were present which took up the question of the rejection of the dealers as I have just read?

A. Yes.

Q. I will ask you to look at Exhibit 228 and state whether or not that exhibit is the minutes of the meeting following the receipt of that rejection.

\* \* \*

A. Yes, these are the minutes.

Mr. Margolis: Now, if your Honor please, we will offer those portions of Exhibit 228 which the government deleted.

\* \* \*

The Court: The objection is overruled. That is admitted as "V."

(The document referred to was received in evidence and marked Defendants' Exhibit V.)

Mr. Rubin: As I understand your Honor's ruling, it is [2663] on the same basis that your Honor overruled our other objections to a similar type of evidence?

The Court: That is correct. It is admitted only to show part of the surrounding circumstances which occurred at the time of the events set forth in there in order that the jury may have that to aid them in weighing the portion admitted as a government exhibit.

Mr. Margolis: Now, I would like to read to you, ladies and gentlemen——

(Testimony of Jeff Kibre.)

The Court: I think perhaps I should also state this at this time. I have been thinking over the matter suggested before the jury came down and I think that I should make a further statement to the jury in connection with that matter, in order that you may be guided in connection with your examination.

This morning I stated to you, ladies and gentlemen of the jury, that certain documents, that is, A and B, were offered in evidence by the defendants and were admitted for three purposes: First, with relation to the defendant Kibre personally and his connection or lack of connection with the alleged conspiracy; and, secondly, with relation to the defendants' contention as to what their purpose and object of the conspiracy—if you ultimately find one existed—was; and, thirdly, to show that as the defendants contend or may contend from the evidence that there was an abandonment of the [2665] conspiracy during the period of time that the government alleges it to have existed.

I should further state to you that the indictment alleges the existence of the conspiracy up to the date of the filing of the indictment, which was August. The government offered proof of the continuance—calculated to show the continuance of a conspiracy through June, I think some time in early July, and rested their case. If during that period of time the parties abandoned the conspiracy, and you should conclude, first, that there was a conspiracy and, secondly, that they abandoned it at



(Testimony of Jeff Kibre.)

that time, then it has relation to the weight that you should give the testimony of members of the alleged conspiracy subsequent to the time of the abandonment. In other words, where a criminal conspiracy is shown to exist, if you conclude that it does exist, then the declaration of each person can be introduced and considered by you as declarations and admissions against all of them, that is, after you once find there is a conspiracy. But if you find during that period of the alleged conspiracy it was abandoned, thereafter any declarations or admissions can only be admitted against the person making them. [2665]

Mr. Margolis: Your Honor, please, I assume——

The Court: I thought that I should, while you had this witness on the stand and while these exhibits are here, make that statement to the jury because at the conclusion of the case I will instruct the jury in substance to the same effect.

Mr. Margolis: I just wanted to say this, your Honor, to ask your Honor to state to the jury that our contentions will be made by us in argument and your Honor is only assuming what we might contend.

The Court: That is correct. Both sides will contend that the evidence should or does prove one thing or another, and when I admit it I have to take into consideration the possibility of what it might prove. When I make a ruling on the evidence, as I indicated to you at the beginning, I

(Testimony of Jeff Kibre.)

have heretofore, I do now again and I will at the conclusion, instruct you that I do not intend to indicate what weight by shall give the evidence or whether it proves anything or whether it does not, that that is up to you.

Mr. Margolis: Ladies and gentlemen of the jury, I should like to read to you from that portion of Exhibit 228 which has now become Defendants' Exhibit V, which was omitted in the presentation of the exhibit by the government, that committee being strike membership minutes of Local 36, International Fishermen & Allied Workers of America, June 15, 1946, Fishermen's Coop Building, San Pedro, California. [2666]

Now most of these minutes have already been read to you by the government. I am just going to read that part that was not read.

There is a portion which was read to you which indicates that Brother Kibre is speaking and explains that he was in the Gulf and then goes on to say certain other things. Since that was read to you before I am not going to repeat it, but I am going to carry on where the part ended that was read before.

(At this point counsel read the portion marked Defendants' Exhibit V to the jury.)

Q. (By Mr. Margolis): Now following this union meeting of June 15, 1946, a portion of the minutes of which I have just read, did you have another meeting with any of the fish dealers?

(Testimony of Jeff Kibre.)

A. It wasn't exactly a meeting, but I did get hold of some of the fish dealers and talked to them.

Q. When was that, approximately?

A. It was the meeting that you have just read the minutes of, it is the meeting which is referred to by those minutes. I knew that meeting took place on a Saturday and I know that I got hold of one of the dealers the following Monday or Tuesday, I know it was the first of the week following.

Q. Within several days after the meeting of June 15th?

A. That is right. [2667]

Q. Where was this discussion held?

A. As I recall, it was in the little restaurant right across the street from the fishermen's wharf there, where all the dealers are. There is a little restaurant right across the street.

Q. At the time the discussion took place, who was present?

A. Well, there were a couple of dealers, one of whom I know quite well by the name of Red. He is the owner of the State Fish Company. I don't know his last name. It is some kind of an odd Italian name. I know him by the name of Red, and everybody around the fish wharf calls him by that name.

Q. Has he been in the courtroom?

A. No, he has not been in the courtroom.

Q. Is he still out there?

A. He still controls the State Fish Company and the present manager of the State Fish Company is, I think his nephew, who was in the courtroom yesterday, a chap by the name of Sammy.

(Testimony of Jeff Kibre.)

Q. Who else was present?

A. I don't recall the name of the other dealer at all. I know he was just sort of hanging around. It was purely an informal meeting, I might say.

Q. Tell us what was said.

A. Well, I asked Red, or rather Red asked me, he said, [2668] "Why don't we wind this thing up?"

So I said, "Look, we worked out an agreement to completely end it all the first of last week and it was our understanding that that was to be the basis for completely settling this dispute, and it was in that sense that we recommended to the membership that they accept the agreement. Our membership accepted it, and we were fully of the understanding that that was the end of it, and even your attorney, Mr. Ekdale, told us when we worked out the agreement in his office that everything was okay, he was going to recommend to you that you accept it and that that be the end of it. That was the following Wednesday and now we are the ones who are wondering." And I said, "Red, what happened? Did Ekdale change his mind or did you bring in another lawyer, or what, because that is what we would like to know, is why after Ekdale had agreed that the agreement that we worked out was entirely acceptable and, as you know, Ekdale is pretty sharp on the antitrust question, and he himself stated that it was entirely satisfactory, as he put it, why within a matter of a couple of days does the whole situation change and does the agreement now become unacceptable?"

(Testimony of Jeff Kibre.)

So Red says, "Well"—he sort of shrugged his shoulders and said, "I don't know. Ekdale is handling all of that and whatever he put in the letter is what we stand on."

And that was about it. [2669]

Q. Did you ever find out from any of the dealers what happened?

A. I never got anything except that the matter was entirely in Mr. Ekdale's hands.

\* \* \*

Mr. Margolis: If your Honor please, I would like to offer the omitted portions of Government's Exhibit 233.

\* \* \*

The Court: Where is the letter that this refers to?

Mr. Margolis: I intend to offer it, your Honor. It is not in evidence.

(The document referred to was passed to the Court.)

\* \* \*

The Court: This in turn refers to some other document. In other words, before I rule on the minutes, it refers to a letter, so I want to see the letter, what the letter is, because you will be offering that next, and when I read the letter the letter refers to something else.

\* \* \*

Mr. Margolis: We will be very happy to offer it.

\* \* \*



(Testimony of Jeff Kibre.)

Mr. Rubin: There is no objection, and if your Honor admits the minutes we will certainly make no objection to the letter. The appendage to the letter, the resolution, we submit is completely immaterial and we will certainly object to that vigorously if that is offered. We will not object to the letter itself going in. [2671]

\* \* \*

The Court: I think you are right. It is pretty hard for me to see how this resolution here can have any materiality or any probative value in connection with the issues that are involved in this case. I think therefore that the ruling will be to admit the minutes, the omitted portion of the minutes, and all of the letter except the last sentence.

\* \* \*

The Court: The omitted portion of the minutes will be W, the letter will be W-1, and will be in evidence except for the last sentence and the enclosure in the letter will be W-2, which will be marked for identification and not admitted. W and W-1 are admitted.

(The documents referred to were received in evidence and marked Defendants' Exhibit W and W-1 respectively.) [2672]

(The document referred to was marked Defendants' Exhibit W-2 for identification.)

Q. (By Mr. Margolis): Mr. Kibre, these minutes which are in evidence in part as Government's Exhibit 233, and in part Defendants' Exhibit W



(Testimony of Jeff Kibre.)

are minutes, are they not, of a meeting of June 28, 1946, of the strike committee?

A. That's right.

\* \* \*

Q. Were you present at that meeting?

A. I was.

Q. Now, the omitted portion which has now been admitted into evidence reads: "Moved, seconded and carried to send letters to San Pedro fish dealers, dated June 28, 1946, stating our new position. Moved, seconded and carried that the letter as written be sent to the butchers union Local 551 A. F. of L. thanking them for their cooperation."

I show you Defendants' Exhibit W-1 and ask you whether or not that is the letter to be sent to the dealers to which the motion I have just read refers.

A. It is, yes.

Q. And that letter was sent to the San Pedro fish dealers?

A. It was sent to all the San Pedro fish dealers.

\* \* \*

At this time, ladies and gentlemen of the jury, I would like to read to you Defendants' Exhibit W-1, except for the portion which the court has ordered omitted, and which the witness has testified to that referred to the minutes of June 28th. This is a letter on the letterhead of International Fishermen & Allied Workers of America, Local 36, Berth 73, San Pedro, California, dated June 28, 1946, and addressed to San Pedro Fish Dealers.

"Dear Sirs: [2675]

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): Mr. Kibre, during the month of June 1946 what, if anything, happened with regard to the availability of albacore in the waters of Southern California?

Mr. Rubin: That is objected to as being incompetent, irrelevant and immaterial, and ambiguous and uncertain, calls for an opinion and conclusion of the witness.

Mr. Margolis: It is a preliminary matter, your Honor.

The Court: It is ambiguous and uncertain.

Mr. Margolis: I don't want to be accused of leading the witness, your Honor. I can make it much more certain, but then I will be accused of leading the witness.

The Court: The objection is overruled.

A. For one of the few times in history albacore showed up in local waters about the middle of June.

Q. (By Mr. Margolis): What do you mean by "showed up"? Can you explain that? Isn't there albacore in the water all the time? [2677]

A. By the way, albacore are a member of the tuna family and are known as the white meat tuna. It is the highest grade tuna.

Q. Is that chicken of the sea tuna?

A. Originally Chicken of the Sea was based on the use of albacore, the whitest meat tuna that there is. However, albacore disappeared late in the 20's, and subsequently Chicken of the Sea was based on the next grade tuna, which is yellow fin and blue fin tuna. Only recently in the last half dozen years

(Testimony of Jeff Kibre.)

have albacore reappeared in local waters. Now, that explains—in other words, albacore are a migratory fish, and they show up—that is, they migrate in various areas of the ocean which are completely unknown as yet by any scientists. The only thing we know, occasionally and from time to time they do appear in the waters off of Southern California, and at various other places up and down the West Coast clear into British Columbia, in fact. Generally, the albacore appear, when they do appear, about—well, generally after July 4th, around the middle of July; so that when they appeared on this occasion in 1946 in the middle of June it was really something extraordinary.

Q. I notice here in the minutes of June 12, 1944, the statement: "Telephone report one albacore in Avalon at 5:30 p.m." Can you explain what that means? [2678]

A. Well, I will tell you. When albacore show up it is pretty much like the gold rush in Alaska. Albacore are really gold to the fishermen. They are the gold of the sea. When albacore show up the fishermen get the word around like an old sourdough gets the word of a gold strike around. When one albacore shows up, it is really news to the fishermen.

Q. It is an indication that there are probably other albacore around?      A. That's right.

Q. So what happened following June 12, so far as fishing is concerned?

A. There was a rush to get the bus ready to go out albacore fishing.

(Testimony of Jeff Kibre.)

Q. Incidentally, do the fishermen who fish fresh market fish fish albacore?

A. Oh, yes, yes, yes.

Q. What has happened when there have been albacore—when albacore has been present with regard to fishing other types of fish?

A. When albacore show up the fishermen leave every other type of fish and go after the albacore.

Q. Not all of them, is that right?

A. Well, a few of them might continue to fish fresh market fish, because they figure all the other fishermen are going after albacore, and therefore they will continue with [2679] the fresh market fish and make a good thing out of it. But generally speaking when the albacore show up every small boat in Southern California that can go out fishing, and that includes a lot of non-commercial fishermen who suddenly become commercial fishermen overnight, go after albacore. It is literally a gold rush.

Q. Is albacore sold to the canneries or the fresh fish market?

A. It is sold almost entirely to the canneries, although the fresh fish markets do buy a small portion for fresh market use.

Q. Following June 12, 1946, what happened this year in 1946 after June 12th with regard to the small boats in San Pedro?

A. They all went after albacore.

Q. Did the albacore run continue through the month of June, or did it stop before the end of June?

A. No, it continued.

(Testimony of Jeff Kibre.)

Q. And beyond that?

A. Yes, yes, on into July and beyond that.

Q. And this business of the small boats in San Pedro fishing albacore, did that continue through the month of June?

A. Yes.

The Court: And July? [2680]

The Witness: Yes. Virtually every small boat in Southern California that was seaworthy was putting out to sea for albacore. And a lot of them that weren't.

Q. You mean a lot of boats that weren't seaworthy?

A. Yes, that weren't seaworthy.

Q. Mr. Kibre, I think you have already testified—this is preliminary—that members of Local 36 include fishermen, working fishermen who own boats and working fishermen who do not own boats?

A. That is correct.

Q. Do you know approximately what percentage of the local are fishermen who own boats and what percentage are fishermen who do not own boats?

A. We have a rough idea based on the union records and from general knowledge of the fishermen that about— [2681]

\* \* \*

A. About 60 per cent of the members of Local 36 do not own boats and merely work on the boats. That percentage may be higher.

Q. (By Mr. Margolis): During the war years and while the War Labor Board was in existence did you have any dealings with the War Labor Board as a representative of the Fishermen's Union?

A. A great deal.

(Testimony of Jeff Kibre.)

Q. Will you tell us the nature of those dealings?

Mr. Rubin: Just a moment. If your Honor please, that is clearly immaterial and I believe your Honor has so ruled this morning.

The Court: Objection sustained.

Mr. Margolis: This is one of the activities of the union, your Honor.

The Court: Objection sustained.

Mr. Margolis: I will ask your Honor that this War Stabilization Board ruling of August 23, 1946, be marked for identification as Defendants' Exhibit next in order.

The Clerk: X.

(The document referred to was marked Defendants' Exhibit X for identification.) [2682]

\* \* \*

Mr. Margolis: I have two of them here. And a copy of the Panel of the War Labor Board, dated February 19, 1945, be marked. [2683]

\* \* \*

The Court: X-1.

(The document referred to was marked Defendants' Exhibit X-1 for identification.)

\* \* \*

Mr. Rubin: We will stipulate that the document is what it purports to be, Mr. Margolis.

Mr. Margolis: Both of these, X and X-1?

Mr. Rubin: Yes. There will be no question about that.

Mr. Margolis: Then I will offer them.



(Testimony of Jeff Kibre.)

Mr. Rubin: We object, if your Honor please, on the ground that they are incompetent, irrelevant and immaterial.

\* \* \*

The Court: Objection sustained.

Mr. Margolis: Will you mark this Defendants' Exhibit Y?

(The document referred to was marked Defendants' Exhibit Y for identification.) [2685]

Q. (By Mr. Margolis): Mr. Kibre, are you familiar with the constitution of Local 36?

A. I am.

Q. Did you have a hand in helping to draw it?

A. I drafted the constitution.

Q. It was thereafter approved by the membership?

A. It was.

Q. I show you Defendants' Exhibit Y for identification and ask you whether or not that is a true and correct copy of the constitution of Local 36.

A. Yes.

The Court: I thought that was already in evidence.

Mr. Rubin: That is of the International.

Mr. Margolis: We have the constitution of the International. This is the constitution of the local.

The Court: Very well.

The Witness: Without examining it clause by clause I would say this is a copy. I am familiar with the mimeographed copy that they did put out, and this is it.

(Testimony of Jeff Kibre.)

Mr. Margolis: Your Honor please, at this time we offer Defendants' Exhibit Y for identification in evidence.

Mr. Rubin: That is objected to as being self-serving, not tending to prove any of the issues of this case. It is not what an organization says it is, it is what they do. [2686]

The Court: The objection is overruled. The document is admitted in evidence. Are you going to read this now?

Mr. Margolis: I am going to read portions of it, and the rest, of course, will be available to the jury. I don't deem it necessary to read the entire document. I think I can finish up in about five minutes reading the portions that I want to read.

The Court: Very well.

(The document referred to was received in evidence and marked Defendants' Exhibit Y.)

Mr. Margolis: Ladies and gentlemen of the jury, this document which is now in evidence as Defendants' Exhibit Y is labeled "Constitution and By-Laws, IFAWA, Local No. 36."

(At this point counsel read portions of Defendants' Exhibit Y to the jury.)

Mr. Margolis: At this time I am through with the witness and you may cross-examine.

Mr. Rubin: Are the by-laws attached to that exhibit? [2687]

(Testimony of Jeff Kibre.)

Mr. Dixon: May they go in at the same time?

Mr. Margolis: My copy doesn't have the by-laws attached. The Witness: They use the same by-laws that Local 33 uses. The by-laws are taken out of the published booklet of Local 33's constitution.

Mr. Rubin: You may have our copy if you want to and then you can substitute a copy later.

Mr. Margolis: Very well. We will agree that the by-laws may go in.

The Court: That is the constitution and by-laws now, is that right?

Mr. Margolis: That is right. [2688]

\* \* \*

### Cross-Examination

By Mr. Dixon:

Q. Mr. Kibre, you are a member of the International Fishermen & Allied Workers of America, I presume?

A. I am a member of Local 34 of the International Fishermen & Allied Workers.

Q. And when did you first become a member of that local?

A. I became a member in 1940, in the fall, when I was hired by the International to become their representative.

Q. Local 34 is one of the affiliated organizations of the national organization, is it?

A. That's right. It is located in San Francisco.

Q. With headquarters in San Francisco?

A. That's right.

(Testimony of Jeff Kibre.)

Q. Are you acquainted with the type of membership of that local at all? A. Yes.

Q. That is what kind of fishermen or workers are members of it? [2689] A. Yes, I am.

Q. Will you tell the jury what they were at the time you joined?

A. The members of Local 34 in San Francisco?

Q. That's right.

A. Yes, the membership of Local 34, which is located in the Port of San Francisco, consists of fishermen on purse seiner vessels, that is, large vessels; it consists of crab fishermen on small boat who work—that is, work on a boat themselves or one or two men on a boat; and small trolling boats that fish salmon, again boats operated by one or two men. Sort of diversified membership.

Q. It consists entirely, I take it from your answer, of fishermen who either own and operate their own boats or work on boats, is that correct?

A. It consists entirely of working fishermen, yes.

Q. Prior to the time you joined this union, had you ever been employed by anyone engaged in the fishing industry?

A. No, I had not. That was my first experience.

Q. Had you ever engaged in the business of commercial fishing for purposes of receiving money with which to make your living?

A. As I explained to his Honor on one occasion, the only experience I had in fishing was sport fishing prior to the time I became a member. [2690]

(Testimony of Jeff Kibre.)

Q. So that prior to the time you became a member of Local 34 in San Francisco you had had no experience in the fishing industry either as a fisherman or as one connected with anyone engaged in the fishing business; that is correct, is it?

A. That is correct.

Q. I will ask you to examine Exhibit J, which is the constitution of the International organization, and state to the court and the jury what provisions, if any, there are in Exhibit J concerned with qualification for membership in the International Fishermen & Allied Workers of America or any of its local units.

A. This is the constitution of the International. The International, of course, does not control——

Q. I understand. I am asking, Mr. Kibre, for you to tell the jury, after you have examined the Exhibit J, whether you find any provisions therein relating to the qualifications for membership in this organization, either as International or such regulations as may be imposed by the International on local organizations chartered by the International.

A. I better take a good look at it. I haven't re-read the constitution completely. There is nothing in the International constitution that determines the eligibility for membership with regard to the local affiliates.

Q. You say you do not find any such requirement in the constitution?

A. I say, as far as I know—I haven't completely reread the constitution.

(Testimony of Jeff Kibre.)

Q. You are the secretary and treasurer of this organization, as I understand it, is that correct?

A. That is correct.

Q. And you say you don't find any provisions in your constitution relating to the qualifications for membership of any local that may be chartered by your national organization?

\* \* \*

A. I am just glancing over it again.

The only provision that I know of in here which touches on that point is Article 5, application for membership in the International on the part of local affiliates, and that goes [2692] on to say that the application, that is, the application for a charter, "Any organization desiring to affiliate with the International Fishermen & Allied Workers of America shall first make application to the secretary-treasurer. The application shall be accompanied by the regular initiation fee and a statement setting forth the total membership directly employed in connection with the fishing industry."

Q. That is Article 5?            A. Yes.

Q. As secretary and treasurer of this organization, do you regard this section as requiring members of local units, chartered by your organization, to be directly employed by someone in connection with the fishing industry?

A. As I say, the eligibility on the part of local affiliates is left up to the locals. This is a technical qualification relating to the issuance of a charter.



(Testimony of Jeff Kibre.)

Q. That is the standards, is it not, in so far as this constitution has any standard for qualifications for membership in any locals of this organization?

A. That is simply a technical classification by which the group applying for a charter sets forth the number of applicants who are employed in their application to the International executive board which passes on the application for a charter.

Q. So so far as you are concerned as the secretary and [2693] treasurer of this organization to whom applications for charters must be made, the language of Article 5 containing the words "directly employed in connection with the fishing industry" do not have any particular meaning, is that correct?

\* \* \*

The Witness: Yes, I will say certainly it has, but I would like to explain my answer.

\* \* \*

The Witness: This is what it means, it simply means this, that a group of people somewhere made application to the International for a charter. They may be fishermen, they may be shore workers, they may be employed in a fish house, they may be employed in a fish cannery, and those who make an application simply list the names of the persons who are making the application so that we will know in effect who are making the application, who the persons are, and that is all the meaning it has, as far as the International executive board is concerned, is to know that the persons making the application are working in the fishing industry.

(Testimony of Jeff Kibre.)

Q. (By Mr. Dixon): Now directing your attention to Article 2, the word "fisherman" is used there. Does that have any particular meaning to you as secretary-treasurer of the association?

A. Fisherman means persons who are working at the occupation of catching fish.

Q. Does it also include—I see the words here "allied [2695] workers." Would the term "fisherman" first include under your constitution and your interpretation of it men who own and operate their own boats engaged in the catching of fish for purposes of sale to dealers?

\* \* \*

The Witness: Yes, and I would again like to explain that a little bit more fully.

Q. (By Mr. Dixon): All right. Will you explain then what you mean by "fishermen" who are in that class?

A. The term "fisherman" as used here certainly might mean a fisherman who operates a small boat by himself and simply works by himself on the boat. In fact, most of the fishermen in the Columbia River area work on the basis of one man to a boat, and a large proportion of them own the boats, and they are all members of the union.

The terms also of course means fishermen who work on large boats in groups.

Q. So that your organization doesn't, and you as secretary [2696] and treasurer of that organization don't, make any distinction in the membership of your organization between fishermen who may

(Testimony of Jeff Kibre.)

own and operate their own boats for the purpose of catching fish for sale to buyers and persons who may work on fishing boats as such, is that correct?

A. Again I must repeat that the eligibility is determined by the local.

The Court: Just a minute now. I think you can answer the question yes or no.

Read the question.

(The question referred to was read by the reporter as set forth above.)

The Witness: No, we don't make any distinction, but again I want to explain that.

Mr. Dixon: I think you have answered my question, that there isn't any distinction made.

\* \* \*

The Witness: We do make—it is a matter of wording—we make a slight distinction.

The Court: He says he does make a slight distinction. [2697]

The Witness: Because I couldn't gather from your question whether you referred to fishermen who do not actively work on boats and we do make a distinction, that is, the International executive board, oh, a year and a half or two years ago, did urge the locals not to admit into membership such persons even though they owned and operated the boat who did not actively work on the boat at the occupation of catching fish. I just wanted to get that clarification. [2698]

(Testimony of Jeff Kibre.)

Q. Well, if I understand it, then, a man who owns and operates his own boat may be a member of one of your local organizations, is that correct?

A. Yes, that is correct.

Q. And he may be a member even though other persons are on the same boat with him engaged in the business of catching fish for the purchase and sale to markets, is that correct?

A. That is not entirely correct, no.

Q. It is a fact, is it not, Mr. Kibre, that that is precisely what the membership of Local 36 is composed of, isn't it?

A. As far as I know the membership of Local 36 is composed of fishermen who do not own boats, and a number of fishermen who either partially own or may own small boats.

Q. So that in the same organization, I mean the same local, your national organization permits the local organization to have in its same membership men who own and operate fishing boats or engaged in the business of commercial fishing, and individuals who work on those boats, is that correct?

A. Yes, sir, as I have stated.

Q. Now, I believe you testified on direct examination that you excluded boat owners from Local 33 some time in 1938 or '39? This was before your time, I believe, but you testified that you were familiar with that from the records. [2699]

A. I don't think I stated it in that manner. I think that I probably said that Local 33 does ex-

(Testimony of Jeff Kibre.)

clude from its membership the owner or a boat owner on each boat. That is, each large purse seine boat.

Q. Well, do you exclude him even though he may be the captain and operator of the boat, as well as the owner of the boat?

A. Understand me, I mean this is something that the local union has done and did long before my time.

Q. You are secretary-treasurer, are you not? Do you know, Mr. Kibre, of your own knowledge as to whether they do or don't?

A. As far as I know, and I can give you I think a fairly clear picture of the situation as it applies to Local 33 because I have been quite familiar with it, the non-union member on each purse seiner is generally the person who is known as the owner of that particular fishing boat. Actually that particular so-called owner is generally only owner in part, and the largest portion of the ownership is controlled by the cannery, and I am sure the local excluded that person from membership because that person is pretty close to the cannery and is guided by their interests.

Q. That is on your assumption?

A. That has been explained to me by the local membership. [2700]

Q. He is paid on the same basis, generally, is he not, as the other members of the crew of the boat on which he is the captain?

\* \* \*

A. Yes, he gets his share.

(Testimony of Jeff Kibre.)

Q. In other words, the captain of the boat gets a share of the lay when the fish is sold, and the other persons working on the boat with the captain also get paid on a share of the lay basis, is that correct?

A. That is correct.

Q. So, so far as their payment is concerned, they are both in the same position, is that right?

A. Not entirely, no.

Q. Well, is there any difference between the manner of payment of a captain of a boat whom you exclude from membership, and the others who are members of the crew?

A. As far as the actual share which goes to the working crew, he participates. [2701]

\* \* \*

The Court: Can you answer that yes or no, or do you know?

The Witness: Yes, as far as I know the boat owner who is known as the boat owner on the boat may receive additional compensation over and beyond what the crew members, the actual crew members or union members, receive.

Q. I am speaking now of a situation, Mr. Kibre, where the boat captain is also the boat owner, to see if that wouldn't make any difference in your answer. We realize the owner of the boat may also have a share of the lay, but that only changes the amount that he might get as owner of the boat.

A. The fishing captain, that is, the man who may be known as the fishing captain on the boat, and who often may simply be an ordinary crew member



(Testimony of Jeff Kibre.)

with no ownership in the boat whatsoever, receives the same compensation as the other members.

\* \* \*

The Court: What he wants to know is whether or not a man who owns the boat, works on the boat, a purse seiner, and runs the boat as captain, if he gets any different compensation [2703] than the share of the lay. He might get a share of the lay for owning the boat, and he might get a share of the lay for being a crew member?

The Witness: Maybe I can just take a moment to explain this, your Honor. You see, there is a confusion in terms here. The captain may not and very generally is not the actual owner of the boat on a purse seiner. The captain is the one——

The Court: He wants to know where he is the owner.

Mr. Dixon: That's right.

The Witness: There is simply one, as I said before, one member working on the boat according to the agreement, that is, as Local 33 operates, who is known as the boat owner, and he receives, when he works on the boat as a crew member, or works and participates in the fishing operation, he receives, first of all, his share of the catch, the same as the other crew members, and he may receive, then, additional compensation from the boat share.

Mr. Dixon: That is right.

The Court: That is the boat share?

The Witness: That is correct.

The Court: I see.

(Testimony of Jeff Kibre.)

Q. (By Mr. Dixon): The captain who is the owner of a purse seine cannot be a member of your organization, as I understand it, is that correct? —he was excluded from [2704] membership?

A. Yes, the membership of Local 33 have excluded the one boat owner on each vessel.

Q. In Local 36 you permit the owner, I believe, to be a member of your union, is that correct?

A. The membership of Local 36 take in the so-called boat owners on the small boats into their membership.

Q. So that the distinction there between the two seems to be an arbitrary one, or is there some other explanation that you can give for it?

\* \* \*

A. The only explanation that I can give is the explanation that has been given to me by the membership of Local 33, which I tried to point out previously, that on the purse seine vessels, which are large vessels, and have a large investment from, say \$50,000 to \$75,000 to \$100,000, the boat owner on those vessels is generally very closely tied to the cannery which has financed the construction of the boat, and the fishermen, therefore, feel that such a person should not be in the membership of the union. [2705]

\* \* \*

Q. (By Mr. Dixon): It is a fact, is it not, Mr. Kibre, that even though the owner owns his boat in its entirety and operates it with other fishermen, that under those circumstances he may not be a member of Local 33?

(Testimony of Jeff Kibre.)

A. That's right, pursuant to the custom of the local.

Q. But in Local 36 the situation is different, even though he owns and operates his own boat he may be a member [2706] of Local 36?

A. That's right? [2707]

Q. Now as secretary and treasurer of the International, will you state to the jury what the sources of income of the International organization are?

A. Yes. Our income is based on an obligation on the part of each affiliate to pay to the International a per capita tax of \$3 for each member per year. That os the source of our income.

Q. Does it have any other sources of income apart from the dues or amounts paid to it in the form of dues from the local organizations chartered by the International?

A. That is our only source of income, is the per capita. Of course the constitution does provide for assessments from time to time which may be levied by referendum vote. That is the only source of income.

\* \* \*

Q. As secretary and treasurer of the International you are, I presume, also familiar with the sources of revenue of all of the locals chartered by your International?

A. Not entirely; no.

Q. Don't you as secretary and treasurer receive financial reports from those organizations disclosing the source [2708] of their income?

(Testimony of Jeff Kibre.)

A. We receive financial reports—in fact, each year now we receive a financial report setting forth the total income, the total disbursements, which enables us to file our tax report pursuant to the new law. And, generally speaking, we have a fairly good knowledge of the method by which the locals collect dues and the rate of dues. But we don't have complete information. It is not required. Technically they should furnish it to us, but if you have ever run such an organization as ours, we don't get the exact information.

Q. To your personal knowledge do you know whether any of your locals have or receive any income from sources other than the dues of their membership?

A. Their only source of income, as far as I know, is the dues which they obtain from the membership or in the event that they also may levy an assessment upon that membership as provided by the local constitutions.

Q. And if there were any other sources of income I presume as secretary and treasurer you would immediately note that in reports received from your locals, is that correct?

A. If we get the reports, we certainly would.

Q. Do you know, or have you ever received, any reports from any locals showing income from sources other than dues of the members of your local chartered by your International? You can answer that yes or no, Mr. Kibre. [2709]

A. No. I would like to explain.

(Testimony of Jeff Kibre.)

The Court: Do you desire to explain the question?

The Witness: Yes. When the locals send in their per capita payment, it is on a form wherein they fill out the total number of dues-paying members, the total amount of dues paid, and the amount of per capita that is being remitted. That is the monthly form that they fill out, so that we wouldn't know exactly whether they have obtained any income from other sources. We simply take it for granted that they operate and collect their dues in the regular manner.

Q. (By Mr. Dixon): I take it then, as far as you are concerned, from your personal knowledge as secretary and treasurer of the International, you know of no sources of income of any locals other than the dues of the locals? A. Yes.

Q. Will you state to the jury what those sources are?

A. As I understand it, many of the locals have a permit system, for example the Alaska Fishermen's Union, whereby a new applicant who has applied, instead of becoming a member of the union until he has proven himself and proven he [2710] likes the industry and is going to stick to it, may simply be a permit member, and may pay \$5 or \$10 for a permit. That is one source of income other than regular dues.

Most of the local constitutions provide that an applicant who becomes a permanent member may

(Testimony of Jeff Kibre.)

then apply that permit fee to his regular initiation fee. That is one source of other income.

Q. Are there any others, Mr. Kibre, to your knowledge?

A. The only others would be when a local levies a special assessment, for example, if a local is engaged in a strike they may levy some special assessment on the membership to raise strike funds.

And from time to time, for example, there are voluntary assessments. They may collect a dollar for the PAC program, for the Political Action Committee program. For example, in conformity with the national CIO program——

The Court: What is a voluntary assessment? How can an assessment be voluntary?

The Witness: That is where the local simply goes on record—well, let's take the PAC, that is, the Political Action Committee, if they decide that the membership should participate in it and calls upon the membership, if the membership so desire, to contribute a dollar per member. That is a voluntary assessment. Many of the locals, for instance two years ago in northern California, the locals up there raised [2711] \$2 per member to undertake a research study of the Table Mountain Dam problem. That is where the Army engineers were planning to build a dam which would have completely destroyed the salmon resources of northern California.



(Testimony of Jeff Kibre.)

The Witness: Those are the ones that have come to my attention. There may be numerous others on the part of locals for any special purpose that they so desire. They have complete autonomy, under our constitution, complete autonomy.

Q. (By Mr. Dixon): Now directing your attention to Local 36, are you particularly familiar with that organization and the sources of the revenue of that organization as secretary and treasurer?

A. I am, yes, generally speaking, I would say.

Q. Can you state to this court and jury what the [2712] sources of income of that organization are?

A. Well, as far as I know, from their regular dues, which they haven't been collecting too much because they haven't paid their per capita for the last six months——

Q. I am just asking what the sources of the income are now.

A. As far as I know, their dues structure is \$2 a month. I think that is the source of their income.

Q. Do they to your knowledge have any other source of income other than the dues of the membership of that organization?

A. Well, they probably issue permits. They may have had voluntary assessments.

Q. That would be the membership applications?

A. Yes.

Q. Are there any other sources to your knowledge than that?

A. Oh, maybe this is it. I understood that during the strike—I wasn't around but I understood

(Testimony of Jeff Kibre.)

that during the strike—they had a strike fund and that they were raising funds by donations and every other way they could raise funds for their strike fund.

Q. So far as you know, as secretary and treasurer of the International, the sources of income of Local 36 are as you have described, namely and principally, from membership [2713] dues and such levies and assessments as may have been made upon the members of that organization, is that correct?

A. Yes.

Q. Do you know whether that organization has ever engaged in the business of buying or selling gear to the members of this organization, fishing gear?

A. I really don't know.

Q. Well, if they had would that have been brought to your attention, as secretary and treasurer of the organization?

A. I seriously doubt it. It is not a matter within our province, that is, the province of the International.

Q. Is it a matter of interest to your International organization whether or not Local 36 would be engaged in the business of, say, buying and selling commercial gear to be used on the boats for the members of that organization at wholesale prices?

A. That is a matter that would be entirely up to the local.

Q. And there is nothing in your constitution, I believe, or is there anything in the constitution, which would cover that sort of activity?

(Testimony of Jeff Kibre.)

A. Not in our International constitution, although we do encourage locals if they want to set up buyer co-operatives to go ahead and do so so that they could buy gear at cost. [2714]

Q. But to your knowledge you know of no such activity having been undertaken by Local 36?

A. No, not of my own knowledge.

Q. Have you been rather closely associated with them in this area during the last two years?

A. Well, from time to time——

Q. Have you or haven't you?

A. Not too closely.

Q. All right. You you know when the charter was granted to Local 36?

A. The charter was granted originally to Local 36 in November of 1940, if I recollect correctly.

Q. 1940?           A. That is right.

Q. That was the time you became what, International representative?

A. That was shortly, a couple of months after I became representative; yes.

Q. And I believe you testified your duties as International representative were to organize or aid in the organization of the fishing industry?

A. To aid in the organization of fishermen and all those under the jurisdiction of the union. That was part of my duties.

Q. In that connection, did you have occasion to aid in [2715] the organization of Local 36?

\* \* \*

(Testimony of Jeff Kibre.)

The Witness: Yes.

Q. (By Mr. Dixon): When did you render such assistance in organizing Local 36?

A. Oh, on several occasions.

Q. To be specific, can you tell the jury when you first began to organize them from the point of view of whether it was 1940 or '42 or '43, or when it was?

\* \* \*

A. Local 36 was first chartered as Local 36, although it had been part of a previously organized union that was first chartered in November of 1940, and I assisted the local [2716] at that time in getting set up under its new charter. That is about all. And then subsequently in 1943——

\* \* \*

Q. Will you state to this court and jury what the type of membership of that organization was at that time, whether they were composed of boat owners or operators or what the composition was?

A. When the charter of Local 36 was issued it consisted of fishermen at Newport Beach, and those fishermen, as we term them, small boat fishermen, some of whom owned their boats, some of whom didn't own their boats.

Q. And that condition from the point of view of membership continued right down to the present time, is that right?

A. That is right. The membership at that time was pretty much the same as it is right now.

(Testimony of Jeff Kibre.)

Q. Now Local 36 was then in existence at the time of the Southern California small boat price conference, was it not, in January of 1944?

A. Yes.

Q. And you were present at that conference, Mr. Kibre, were you?      A. Yes, I was [2717]

Q. Did you have anything to say at that conference with reference to taking united action to establish a solid foundation for uniform prices of fish sold by the members represented or present at that conference? [2718]

\* \* \*

Q. I believe you actually called that meeting, did you not, Mr. Kibre?

A. I certainly did. I called that conference.

Q. And at the time the meeting was opened, did you explain that the meeting had been called to work out a coastwise schedule of minimum prices on fresh fish?

A. I stated that, but I would like to explain that because the minutes are inaccurate.

\* \* \*

The Court: I think then that your counsel can straighten it out on redirect examination at the conclusion of the cross-examination. [2719]

\* \* \*

Q. (By Mr. Dixon): And at that conference a minimum price schedule was agreed up, was it not——

\* \* \*

(Testimony of Jeff Kibre.)

Q. —by the members represented by Local 36 as to what would be charged to the dealers?

\* \* \*

Q. Is that correct, to the best of your recollection? A. Yes, sir, they agreed on a schedule.

Q. I believe you testified on direct examination that in August or July of 1944 you were aiding the union, that is, Local 36, in entering into a fish stabilization agreement with the Santa Monica Seafood Company and the Bay Fish Market, is that correct?

A. That is correct.

Q. I will hand you what has been marked for identification as Government's Exhibits 240 and 244 and ask you if those were the contracts in which you aided in their negotiation with those companies named.

A. Yes, these are the contracts.

Mr. Dixon: We offer these in evidence, your Honor.

The Court: Admitted.

(The documents referred to were received in evidence and marked Government's Exhibits 240 and 244.)

Q. (By Mr. Dixon): These contracts were negotiated and [2720] entered into, I believe, as part of the conditions of settlement of this controversy that you described on direct examination, is that correct? A. That's right.

Mr. Dixon: I would like to read at this time to the jury, your Honor, a portion of this contract, Exhibit 244.



(Testimony of Jeff Kibre.)

“3. It is further agreed that said fish dealers and processors and the company or companies signatory hereto fully recognize and agree with the doctrine of the ‘closed union shop’ and will neither employ nor purchase fish from any fishermen not at all times a member in good standing in the union.\*\*\*”

And the same provision is contained in paragraph 3 of Government’s Exhibit 240.

Q. (By Mr. Dixon): Mr. Kibre, by the provision just referred to in this contract, the companies mentioned were prevented, were they not, from purchasing fish from non-members of your organization, Local 36? A. They were not.

Q. You say they were not?

A. No, because the clause provides only that after a fisherman sells his fish and continues to sell his fish, that then he shall apply to the union for membership, and the union will accept him into membership.

Q. In other words, if the dealer under the contract [2721] is buying from a non-member of Local 36, and it comes to the attention of Local 36, the dealer then can no longer buy from such non-member unless he becomes a member of Local 36, is that the exception to the rule in the contract?

A. Yes, if the local would notify the dealer who has agreed to abide by that provision, then he would refuse.

Q. At about the same time these two contracts were entered into that I have just shown you, I believe Local 36 was also active in endeavoring to at-

(Testimony of Jeff Kibre.)

tain similar contracts from other dealers, were they not.      A. Not similar to these contracts, no.

Q. You mean this was not the same type of contract that you were submitting to other dealers at that time?

A. No, the contract that was being submitted to other dealers was purely a tentative agreement and did not contain any closed shop clause; it was primarily an agreement asking for recognition of the union.

Q. Can you explain to the jury why this provision was contained in this contract and not in the others?

A. Yes, because all of the fishermen in Santa Monica had joined the union and had gone on record for such a clause. They were all members and they felt that, therefore, the contract should provide a security clause for the union itself. As far as Southern California is concerned, when we were offering contracts to others dealers we didn't claim to [2722] represent all of the fishermen at all, we claimed to represent a substantial majority, and in the contracts that we presented to the dealers all we asked in those contracts was to be regarded as the representative of the membership of the union at that time.

Q. In the letters which were circularized by Local 36 in June 1944 to all the Southern California fish dealers set forth in your Exhibit O, you state that one of the purposes was to stabilize the fresh fish industry, is that correct?      A. That's right.

(Testimony of Jeff Kibre.)

Q. And by stabilizing the industry you mean to establish minimum prices for all fish caught in this area which may be sold to the dealers in the area covered by Local 36?

A. That is not the complete meaning of stabilization as we used the term.

Q. Well, that is one of the meanings, isn't it?

A. That is one of the meanings, yes.

Q. There may be others, but at least that is one of them?

A. There are several other very important factors involved in what we mean by stabilization.

\* \* \*

Q. (By Mr. Dixon): Now, in connection with this stabilization program referred to in Exhibit O, Mr. Kibre, were contracts similar to Exhibit 3 submitted to any of the dealers?

\* \* \*

The Witness: The contracts that were submitted to the dealers were not the same as this particular contract at all. (Indicating) [2725]

\* \* \*

The Witness: I think that the agreement submitted to those dealers in 1944 was based on this contract, but did not embrace all of the clauses in this contract at all. It was a tentative agreement intended to start a collective bargaining relationship between the union and the dealers.

The Court: Let me see if I understand you. The agreement submitted to the remainder of the dealers

(Testimony of Jeff Kibre.)

outside of Santa Monica in 1944 was not the same as the Santa Monica agreement? [2726]

The Witness: That is correct.

The Court: And it was not the same as Exhibit 3?

The Witness: That is correct.

The Court: All right.

The Witness: It did not contain a closed shop clause, and it was a very tentative agreement. I don't recall the exact wording of it.

The Court: All right.

Q. (By Mr. Dixon): And were you successful at that time in having all of the dealers covered by Local 36 area sign those agreements that were submitted to them at that time? A. By no means.

Q. All right. A. None of them.

The Court: None of them?

The Witness: That is correct.

Q. (By Mr. Dixon): Now, Mr. Kibre, I believe, passing to April 1946, you were present at a so-called Barracuda Conference; do you recall that? A. Yes, I do.

Q. That was April 18, 1946, is that correct, to the best of your recollection?

A. That's right.

Q. Were the prices or minimum prices to be charged by the fishermen who sold fish to dealers discussed at that [2727] conference?

A. At the Barracuda Price Conference? I don't recollect whether they actually went on record for

(Testimony of Jeff Kibre.)

specific prices, but certainly they were discussing the whole proposition of a minimum price agreement.

Q. And it was agreed at that meeting, was it not, by those present that the OPA ceiling price on barracuda would be maintained as the minimum price of all barracuda sold by the members represented at that meeting to fish dealers?

A. It was agreed at that meeting, which was——

Q. Was it or not? Can you answer that yes or no?

A. Yes, sir, it was agreed. I just want to explain——

\* \* \*

A. It had to go to the membership. [2728]

\* \* \*

Q. (By Mr. Dixon): Do you recall whether Mr. Bruce Martin made any comments concerning the discussion of fixing a minimum price at this meeting?

A. I certainly do. That is one thing I remember.

Q. By the way, you might tell this jury who Mr. Bruce Martin is. Will you do that, Mr. Kibre.

A. I don't know what he was at that time, it was the first time I ever saw or heard of him, but I understand now he is at the present time the manager of what is called the Commercial Fishermen's Co-operative Association, or something along that line, in Newport Beach. That was the first time I ever met him. It was what he said that stuck in my memory at the time.

(Testimony of Jeff Kibre.)

Q. Do you know whether he was there as a buyer of barracuda?

A. I don't know what he was doing there, to tell you the truth.

Q. Now, Mr. Kibre, do you know whether Local 36 had completed its organization at San Diego at the time of this conference?

A. In April? You mean the barracuda conference?

Q. Yes.

A. It has never completed the organization in San Diego, not up to the present time certainly.

Q. At least there was a unit there at San Diego?

A. Yes, there was a unit, about one-third or so of the total fishermen.

Q. All of the various ports to which Local 36 had units were represented at this barracuda conference on April 18, 1946, weren't they, Mr. Kibre?

A. As far as I know, yes.

Q. And do you recall whether any agreement was entered into among those present to endeavor to get the minimum price contract covering barracuda?

A. I recall those present, that is, the conference there, went on record urging the membership of the local to adopt a program to obtain a contract which would provide that the dealer would pay the OPA ceiling as the minimum price. [2731]

\* \* \*

Q. Mr. Kibre, I believe when court recessed last Friday you testified that you were present at a bar-



(Testimony of Jeff Kibre.)

racuda conference held April 18, 1946, and that at that conference it was moved, seconded and carried that a contract be signed with all Southern California dealers making the ceiling price the minimum price, is that correct?

A. That is right.

Q. Was such a contract signed by the union or those present at the conference with all the Southern California dealers?      A. I don't think so.

Q. Now I believe you also testified on direct examination that you attended some meetings in the latter part of April and early May of 1946, at which a general program to increase the general consumption of all types of fresh fish by the public generally was discussed, is that correct?

A. That is right.

Q. And all the dealers in Southern California were invited to attend that meeting, is that right?

A. We didn't invite the dealers. The Western Seafood Institute invited the dealers. We just simply contacted the Western Seafood Institute with the assistance of the Fish and Wildlife Service.

Q. In any event, all of the wholesale and retail dealers possible in Southern California that could attend that meeting were present, is that correct?

A. Yes. We urged the greatest possible participation. [2736]

Q. And at that meeting you discussed, I believe, ways and means of developing the general market for fresh fish in this area, is that correct?

A. Yes——

(Testimony of Jeff Kibre.)

Q. Insofar as consumption and use of fish by the public is concerned? A. Yes.

Q. And that included all types of fresh fish, did it not?

A. That was the proposition as we put it. Of course, there were certain species——

\* \* \*

The Witness: There were certain species that came in for particular discussion, those species which were most [2737] abundant, such as rock fish from up north, and barracuda here in Southern California.

Q. (By Mr. Dixon): It is a fact, is it not, Mr. Kibre, that it was the purpose of this meeting to develop a taste generally for fish by the public, is that correct? A. That's right.

Q. And it was not intended primarily to confine that taste to fresh market fish caught in this area or shipped in from the north or the east coast, is that correct?

\* \* \*

A. The way the question starts and the way it winds up—I know what I want to answer; the answer is we did not want to confine it to any species of fish or to any section of the country. [2738]

Q. That is right. That is, regardless of where the fish was caught the purpose of this meeting was to develop the use of all types of fresh fish by the public generally, is that correct?

\* \* \*

The Witness: That is correct.

(Testimony of Jeff Kibre.)

Q. (By Mr. Dixon): Was that the same—by the way, what came of that program—anything?

A. As I stated the other day, we had two meetings prior to the time I left for the East, rather, for the Gulf, and then subsequently for the East, and I understand they had an additional meeting, and then the program that we proposed just seemed to evaporate in the air for lack of effective activity and co-operation on the part of the dealers.

Q. Well, this was to be financed, was it not, by the dealers and the fishermen and the wholesalers?

A. It was to be a joint program, which the fish and Wildlife Service was to participate—

Q. If you will answer my question. I will withdraw that. Who was to finance the program for the public eating more fish?

\* \* \*

A. The government was to participate by supplying [2739] personnel and donating that, in fact, as their contribution; that is, through the Fish and Wildlife Service. The fishermen agreed, up north particularly where they had a little more money in their jeans than the fisherman down here, they agreed to raise an amount of funds which would be available to the committee down here for promotional advertising. And the dealers in the Northwest, also, agreed, at the suggestion of the government, by the way, to assess themselves and to make available an amount down here which would be available for promotional advertising. The difficulty—

The Court: No.

(Testimony of Jeff Kibre.)

Q. (By Mr. Dixon): Who else, if anybody, was to finance this program?

A. The local dealers were also to participate in raising funds, and that is where it broke down.

Q. Did the people up North——

The Court: You say the local dealers?

The Witness: The local wholesalers and dealers.

The Court: Not the fishermen?

The Witness: The local fishermen, even the dealers admitted they didn't have enough money in their jeans to make any money available.

Q. (By Mr. Dixon): Did anyone furnish any money to carry out this program that you have just described?

A. The only money that was actually put on the line was [2741] I think, \$2500 which the northern dealers stated was available whenever the program would get under way, and also the money from our northern auto trawl fishermen. They actually passed the program in their union meeting and agreed on the assessment. I think it was a quarter of a cent a pound.

Q. To whom was this money turned over, Mr. Kibre?

A. This money was not turned over to anyone, because the program just simply broke down.

Q. And it is a fact, is it not, that no one ever paid in any money to anyone to carry on this program that you described; that is a fact, isn't it?

A. There was no program to pay it into. The money was not paid, of course not.

(Testimony of Jeff Kibre.)

The Court: All right.

Q. (By Mr. Dixon): So nothing further ever came of the program?

A. Well, I stated the other day that I did talk to the government personnel about it, Ralph Russell, and nothing came of it because, as Ralph Russell and the other Fish and Wildlife people put it, the dealers weren't really interested in developing an over-all program.

Q. That is your view of it, is that right? Because the dealers didn't put in their money, why nothing further came of it?

A. It was not solely a question of funds or money. [2741]

Q. And you did nothing further, that is, Local 36 did nothing further with this program after these meetings that you have testified, is that correct?

A. Other than the minimum activity that we always carry on, and that is primarily through the unions in the area advertising fish and publicizing.

Q. That is, advertising fish in your newspaper, the International Fishermen's paper?

A. And also through other unions connected with the CIO. That is, we always carry on that activity.

Q. It is a fact, is it not, Mr. Kibre, that Local 36 does not own or lease or operate any dockage facilities for its members?

A. That is right.

Q. It is also a fact, is it not, Mr. Kibre, that Local 36 does not own, lease or operate any processing plants itself for the use of its members?

A. That is right.

(Testimony of Jeff Kibre.)

Q. It is also a fact, is it not, Mr. Kibre, that Local 36 does not own or operate any storage plants for storing or icing the fish of its members?

A. That is right.

Q. Now coming to these meetings that you testified to, had on or about June 10, 1946, those meetings were of a different type—I will withdraw that.

At those meetings the Los Angeles dealers were not present, were they? A. No.

Q. The meeting of June 10, for example, was solely with the dealers against whom the picketing was going on in the San Pedro area, is that correct?

A. That was with the San Pedro fish dealers.

Q. At that meeting there was no discussion about increasing or carrying on this program that you previously referred to, was there?

A. Yes.

Q. I am talking now about the program of getting money to sell fish to the public generally.

A. Well, when I——

Q. Was there? A. Yes.

Q. Was that the purpose of the meeting, Mr. Kibre?

A. No, but I pointed out that that was the fundamental objective of the union. That is why I was so anxious to settle the strike.

Q. Was that the purpose of the meeting, Mr. Kibre?

A. The purpose of the meeting was to attempt to bring about an immediate end of the difficulties there in San Pedro.



(Testimony of Jeff Kibre.)

Q. It is a fact, is it not, Mr. Kibre, that the purpose of the meeting was to discuss contract Exhibit 3 previously served upon all of the dealers in the southern area who had not signed the contract, is that correct?

A. That was not the purpose of the meeting; no.

Q. Did you have any discussion at this meeting on June 10th at all about contract Exhibit 3?

A. I don't recall very much discussion about Exhibit [2744] 3; no.

Q. In any event, after these meetings that you testified you had with the dealers at San Pedro on June 10 and June 11, it is a fact, is it not, that the dealers notified Local 36 on June 14 that they could not go along with the proposal submitted by the union, is that correct?

\* \* \*

The Witness: Yes, but I would like to explain that because—— [2745]

\* \* \*

Q. Now referring to Defendant's Exhibit C, Mr. Kibre, I noted in that exhibit——

\* \* \*

Q. I notice that that exhibit states that "It is suggested that the fishermen resume fishing and offer their catch to the markets, the price to be set by open, aboveboard, fair bargaining." Do you find that in the letter?

A. Yes. [2746]

\* \* \*

(Testimony of Jeff Kibre.)

Q. Was the proposal or the suggestion made in this exhibit submitted to the meeting of June 15, if you know?

A. All that I recall is that the letter as a whole was read to the membership. You see, I think this letter was received just prior to the meeting, but I am sure that there was some discussion about this letter and I roughly recall that when this particular sentence was read there was a big horse laugh from those present.

Q. I see. So I take it from the horse laugh that was given to the suggestion that there was no further suggestion or discussion of that proposal at the meeting of June 15, is that correct?

A. Well, as a matter of fact, they didn't feel that it was a proposal.

Q. So it is a fact then that there was no discussion of that particular suggestion by either you or the membership at [2747] the meeting of June 15, is that correct?

\* \* \*

The Witness: There was discussion of this letter as a whole because the letter as a whole had repudiated——

Q. (By Mr. Dixon): The letter speaks for itself. I am just asking a question, Mr. Kibre.

A. I don't think that the fishermen present there picked out any particular sentence. They were concerned with the letter as a whole. [2748]

\* \* \*

(Testimony of Jeff Kibre.)

Q. Now it is a fact that at the time this proposal was submitted that the markets and the dealers who had not signed Exhibit 3 were being picketed by members and non-members of Local 36, is that correct?

A. You mean at the time that this letter was sent to the union?

Q. Yes, at the time of the meeting of June 15.

A. As far as I know, there were a couple of pickets marching up and down in front of the docks there, that is, on the wharf side.

Q. And it is a fact, is it not, Mr. Kibre, that on June 15 the clearance card system of Local 36 was still in effect, is that correct?

A. As far as I know. I wasn't acquainted with the actual mechanics of the local at that time.

Q. Didn't you commend the various motions that were made at this meeting of June 15 as being one of the means of putting the maximum pressure on the dealers?

A. I simply commended the set-up as a whole and particularly certain organizational steps that were taken that were designed, not in connection with the strike but were [2749] designed to improve the set-up of the union as a whole on a long range basis.

Q. And it is a fact, is it not, that you made the comment at this meeting of June 15th that the action taken at the meeting of June 15th would put the maximum pressure on the dealers?

(Testimony of Jeff Kibre.)

The Witness: Yes. I recall making such a statement. I recall the reasons and the particular circumstances that gave rise to that statement. It was to this effect: That because of the albacore run the local made provision that everybody was fishing.

\* \* \*

Q. (By Mr. Dixon): It is a fact, is it not, Mr. Kibre, that non-members of Local 36 were required to picket the non-signing dealers?

A. I wouldn't know about that.

Q. You say you don't know anything about that?

A. I wouldn't know about that.

Q. Do you know whether that particular matter was discussed at the meeting of June 15th?

A. I was sort of in and out of the meeting at several stages answering telephone calls. I know there were a great many members there, fishermen there, who were not members of the union. I know several of them stood up when they were asked.

Q. Do you know whether they were ones who had filed applications for membership after the strike had been called?

A. I wouldn't know. I am not concerned with the details of the operation of the local.

Q. You mentioned in your direct examination that during the month of June albacore, I believe, started to run, is that correct? [2752]

A. Yes.

Q. Do you know whether any of the non-signing dealers were able to purchase any of that albacore during the period of the strike and picketing?

(Testimony of Jeff Kibre.)

A. Albacore is sold customarily to the canneries.

\* \* \*

Q. (By Mr. Dixon): Do you know?

A. I don't know whether any of the non-signing dealers bought any or not.

Q. I see. It is a fact, is it not, Mr. Kibre, that the picketing of the non-signing dealers continued through the month of June, isn't it?

A. Yes, sir, a couple of pickets were parading out there, I think, throughout the entire month of June.

Q. That was true in Newport, as well as San Pedro, was it?

A. I don't know about the situation in Newport to a great extent.

Q. I will ask you to refer to Exhibit W-1 and ask you if you ever saw that particular document before.

A. Yes, I did. [2753]

\* \* \*

The Court: Did you participate in its preparation?

The Witness: Yes, I did. If I am not mistaken I think I wrote it myself.

Mr. Dixon: We now offer Government's Exhibit 37 in evidence.

Mr. Kenny: I think that is the exhibit the government withdrew once.

The Court: Yes, I think I remember this.

Mr. Dixon: We now offer it in evidence, your Honor.

The Court: Let me see W-1 now.

(Testimony of Jeff Kibre.)

Mr. Andersen: We objected before on the ground, that W-1 was not attached to it, your Honor; then we introduced W-1.

Mr. Margolis: Now that W-1 is in evidence we have no [2754] objection. We wanted the whole thing in, that is all we were interested in.

The Court: It is admitted.

(The document referred to was marked Government's Exhibit 37, and was received in evidence.)

The Court: W-1 is——

Mr. Dixon: That is the letter.

Mr. Andersen: It is the letter Mr. Naylor testified about.

The Witness: W-1 is the letter that was sent to the San Pedro dealers. That is the letter that I prepared.

The Court: 37 is in evidence. I suppose the record will straighten itself out as to whether this was the enclosure referred to therein.

Mr. Margolis: If it doesn't, we will see that it is straightened out.

Mr. Rubin: We can settled that right now. Will you stipulate that is the enclosure?

Mr. Margolis: Yes.

Mr. Rubin: That straightens the record out.

The Court: Very well. The jury will take it as an accepted fact that the exhibit W-1 was the enclosure.

Mr. Rubin: Copy of the enclosure.



(Testimony of Jeff Kibre.)

The Court: A copy of the enclosure that accompanied Government's Exhibit 37. [2755]

Mr. Rubin: Less the resolution which is referred to in Exhibit W-1 and which is not in evidence, and which has been excluded by your Honor.

The Court: Plus nothing.

Mr. Rubin: Less.

The Court: I thought you said plus something.

Mr. Rubin: There was an enclosure to W-1, and the enclosure to W-1 is not in evidence, but W-1 as a letter is an enclosure to No. 37.

Mr. Andersen: They undoubtedly have the original letter that was attached to 37.

Mr. Rubin: We do not, Mr. Andersen, I am sorry. But we will stipulate that is a copy of it.

The Court: Let's go ahead.

Mr. Dixon: I would like at this time to read from Exhibit 37 to the jury.

(Whereupon counsel read from Exhibit 37 to the jury.)

Mr. Dixon: That is all, your Honor.

The Court: Redirect?

Mr. Margolis: Yes, your Honor. [2756]

### Redirect Examination

By Mr. Margolis:

Q. Mr. Kibre, on cross-examination there was some discussion concerning the reason or the reasons why the owners or part owners of the large boats, the purse seiners and similar vessels, were

(Testimony of Jeff Kibre.)

not admitted into Local 33, whereas the owners of the small boats were admitted into Local 36. Would you please at this time give a complete statement of the reasons?

Mr. Dixon: If the Court please, I object to that question as calling for a speech, so to speak, on the part of the witness. I think he can amplify, if necessary, what the answer was on cross-examination if it needs amplification.

The Court: Yes, I think that is pretty much of a shotgun question.

Mr. Margolis: This was opened on cross for the first time.

The Court: I know, but you can formalize it and be a little more specific.

Q. (By Mr. Margolis): State what the reasons were or are.

A. Yes. I will try and be as brief and factual as possible.

With regard to the small boat fishermen, they make their entire earnings, or substantially all of their earnings, out [2757] of their share as working fishermen. Their investment in the boat, or in a boat, when they buy a vessel their investment in that boat, that is, the small boat fishermen, is primarily an investment in a boat for the purpose of using the boat for its use value.

Mr. Dixon: Now, if the Court please, I submit that the witness is doing precisely what I expected he would do, and I object to the answer and move that it be stricken.

(Testimony of Jeff Kibre.)

The Court: Yes. The answer is starting out purely in the nature of argument.

I didn't know that the matter was left unclear on cross examination.

Mr. Dixon: It wasn't, your Honor.

The Court: It seemed to me that that question was clear. The witness then stated the reason large boats were not taken into the union, was that usually they had some kind of an affinity to the cannery, either through financing or something else.

\* \* \*

Q. Mr. Kibre, in response to a question by Mr. Dixon on cross examination, on page 2695, with regard to who were [2760] members of the International, you said they may be fishermen, they may be shore workers, they may be employed in a fish house, they may be employed in a fish cannery. Now do all fishermen work on boats?

A. No.

Q. What is the situation with regard to some fishermen?

A. We have quite a few fishermen that don't work on boats.

Q. Where do they work?

A. They work right on shore, they work on beaches. For example, the famous horse seines operated in the mouth of the Columbia River, where there is a sand bar and the fishermen work on the sand bar and a seine is dragged through the water by horses.

(Testimony of Jeff Kibre.)

Also in Newport Beach, for example, there are seines worked right on the beach to catch smelt, and these are operated by tractors.

Right up above Santa Barbara we have beach seines also. They are operated on the surface in a similar manner, either by sheer muscle on the part of the men themselves or by the utilization of tractors or other forms of power. There are quite a few members that don't work on boats. In fact, that was the primitive form of fishing, was fishing right on the beach. [2761]

\* \* \*

Q. No, Mr. Kibre, on cross examination you were asked some questions about the Southern California small boat price conference, which was held on June 11, 1944, and the minutes of which are in evidence as Defendants' Exhibit L. What did you have to say at that meeting with regard to taking united action to establish a sound foundation for uniform prices of fish sold by members represented or present at that conference? [2762]

\* \* \*

The Witness: Yes. I gave quite a lengthy talk and I stated that this meeting had been called by me pursuant to a program laid down by our International union at its December, 1943 convention. That program called for the promotion and stimulation of group bargaining on the part of small boat fishermen, and this position as taken by our International union at the 1943 convention, in turn, went back to the McColloch decision of January

(Testimony of Jeff Kibre.)

15, 1943. That as a consequence of that decision our union had embarked on a program of developing group bargaining among the small boat fishermen, and I stated to the fishermen, those here at this convention, on that occasion, that pursuant to that program embarked upon by the International union that we wanted to see the fishermen in Southern California, the small boat fleet in Southern California, establish the kind of organizational setup which would make it possible for them to engage in sound group bargaining for fresh market fish—— [2764]

\* \* \*

I think it was at the point where I was pointing out to the delegates to this conference that in order to provide a sound basis, a sound foundation for group bargaining for fresh market fish in Southern California it was necessary that they organize all of the market fishermen and small boat fishermen in the Southern California area, since that was an integrated whole, and it was that that I urged them to do.

There are certain ambiguous portions here that I wanted to explain, in addition.

\* \* \*

The Court: You may make your explanation.

The Witness: In this very first sentence, "Brother Kibre explained that the meeting had been called in line with the program to work out a coast-wise schedule of minimum prices," the use of the term "coast-wise" by me referred to the area



(Testimony of Jeff Kibre.)

in Southern California roughly from Santa Barbara to San Diego. That was the usage of the word "coast-wise," and I wanted to explain that, that that was the area which was in question, and not the entire Pacific Coast; and that, secondly, on the basis of group bargaining programs in the various areas with reference to, for example, encouraging development of quality control, and such, that these suggestions from each area would be combined into a coast-wise program in the entire west coast relating to quality control, size, standards for fish, and so forth and so forth.

Those are some of the ambiguities that I wanted to explain. [2767]

\* \* \*

The Witness: There was just one other portion of these minutes which I can't make head nor tail of as they are reported here, but I recall what I did tell the conference, and that is on the second page under point 3, barracuda.

The minutes say something about "the 1942 price, the base generally used by the OPA in fixing prices can not be used as the final determination of either a minimum or a maximum."

What I told the conference there, I explained the basis upon which OPA was operating in so far as fixing ceilings on fish prices, that is, at the producer level. I explained that what the OPA was doing was using the weighted average of all 1942 prices for a particular species, and that that thereupon became the ceiling which the OPA was using.



(Testimony of Jeff Kibre.)

I also explained that in most operations, particularly in the canning industry, that that was an equitable basis in so far as the actual method utilized, since there was a stable price in 1942 and therefore the average was, in effect, the stable price remaining throughout the year, and an average in that sense would be a fair base to be used as a ceiling.

But in connection with barracuda, the price fluctuations [2770] were extremely severe, from lows of around 2 cents and 3 cents a pound up to highs of about 25 cents or 27 cents a pound, and that the method used by the OPA of using the average, the weighted average, of the prices applied for all landings did not square with the actual meaning of the stabilization program, or the price control act. That is what I was pointing out, that if OPA was to be consistent in applying the formulas utilized in other sections of industry they would have to take an average of the highs only. That is what I was really pointing out with regard to this session.

Mr. Margolis: I have a document here which I would like to have marked as Defendants' exhibit for identification next in order.

The Clerk: Z.

(The documents referred to were marked Defendants' Exhibit Z for identification.)

Q. (By Mr. Margolis): Mr. Kibre, in your testimony with regard to the contracts which are in evidence as Government's Exhibits 240 and 244, be-

(Testimony of Jeff Kibre.)

ing the contracts entered into with the two Santa Monica dealers, you stated that there was a written release and satisfaction executed as part of that settlement in exchange for certain moneys which were paid over to the group of fishermen, is that right?      A. That is correct. [2771]

Q. Now will you look at the documents which have been marked Defendants' Exhibit Z for identification and state what that document is?

A. This is the release which was signed in connection with the proceedings against Jack Delucca of Santa Monica Seafood Company. [2772]

Q. Was a similar release signed on behalf of the other dealer?      A. It was.

Q. What was his name?

A. His name was Curly Polkinghorn, and the firm name, as I recall, was the Bay Fish Market.

Q. What were the differences between the two releases?

A. The only difference was as to the amount of cash reimbursement that was to be made by the dealer to the fishermen. The release here for Delucca was \$2500, which he paid to the fishermen in settlement of the weight claims; and Curly paid—Polkinghorn paid, as I recall, \$6500.

Q. I notice that there are two lists of fishermen both marked Exhibit A, attached to Defendants' Exhibit Z, for identification; do you know what those are?

A. Yes, these are the lists of the names of the fishermen to authorize me to act in their behalf in

(Testimony of Jeff Kibre.)

filing the actions and in settling the actions. One is the list for Delucca, and the other is the list for Curly Polkinghorn.

Mr. Margolis: If your Honor please, we offer Defendants' Exhibit Z, for identification, in evidence.

\* \* \*

The Court: Objection overruled. Admitted.

(The document referred to was marked Defendants' Exhibit Z, and was received in evidence.)

Q. (By Mr. Margolis): Mr. Kibre, in cross examination in connection with Government's Exhibits 240 and 244, which are the two Santa Monica contracts,—which are identical, are they not, except for the fact that one covers one company and the other another company, is that right?

A. That's right.

Q. In connection with those a certain clause was read to you by Mr. Dixon, and he asked you to explain whether or not this clause prevented non-members—prevented the dealers from purchasing fish from non-members of your organization Local 36, and you answered that the clause provides only that after a fisherman sells his fish and continues to sell his fish that then he shall apply to the union for membership and the union will accept him into membership.

This is the question: what Mr. Dixon read to you was this: "It is further agreed that said fish dealers

(Testimony of Jeff Kibre.)

and processors and the company or companies signatory hereto fully recognize and agree with the doctrine of the 'closed union shop' and will neither employ nor purchase fish from any fisherman not at all times a member in good standing in the union." How do you explain your answer in light of that language?

A. What Mr. Dixon read was only a portion of the [2774] paragraph, of the full clause.

\* \* \*

Q. (By Mr. Margolis): The rest of it reads, does it not,—starting in "not at all times a member in good standing in the union. \* \* \* or that if not members, not in good standing, that they will become members or place themselves in good standing within 10 days thereafter. In the event that after said 10 days' period, the union notifies the fish dealers and processors that any fisherman is not a member, or that if a member is not in good standing, then in any such event the Company will not employ nor purchase fish from such fishermen."

Is that the language that you had reference to in your answer? A. That's right.

Q. At any time did the union ever give notice to either of the two dealers covered by Government's Exhibits [2775] 240 and 244 that they should not purchase fish from any fishermen?

\* \* \*

A. To the best of my knowledge the union in Santa Monica has never given such notice.

The Court: Do you know?

(Testimony of Jeff Kibre.)

The Witness: I am fairly well acquainted with the situation out there, yes.

The Court: Just what people have told you?

The Witness: The local business agent from Santa Monica, and, in fact, the dealers, with whom we have had very friendly relations ever since the contract was entered into. [2776]

\* \* \*

Q. (By Mr. Margolis): At page 2722 of the transcript you were asked whether or not at the time Exhibits 240 and 244 were signed, which was in August of 1944—those are the two contracts we have been talking about—you submitted similar contracts to other dealers in this area, and you testified that they were not similar contracts. Do you have a copy of the type of contract that was submitted?

A. Yes, I located a copy in my file of the contract that was submitted to the other dealers.

Q. You have handed me a document headed "Southern California Fish Stabilization Agreement," is that right? A. That's right.

Q. Incidentally, the agreements which were signed in August of 1944 with the two Santa Monica dealers were submitted to them long before that time, were they not? A. Oh, yes, yes.

Mr. Margolis: I will ask that this document just handed me by the witness be marked Defendants' Exhibit next in order.

The Clerk: AA.

(The document referred to was marked Defendants' Exhibit AA, for identification.)



(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): Is there anything on Defendants' Exhibit AA which refreshes your recollection as to when that was submitted to the dealers?

A. Yes, the "1944" used in the caption of the contract, and then this note which I myself placed on there when it went into my file.

Q. You got this from your personal file, is that right? A. That is correct.

Q. And you made the note on top?

A. Yes.

Q. Which says what?

A. "Preliminary agreement submitted to dealers June 10, 1944, and discussed at subsequent negotiations."

Q. And this is the agreement which you had reference to in answering Mr. Dixon when you said a different agreement, not a similar agreement, to the one submitted to the Santa Monica dealers was submitted to the other dealers, is that right?

A. That is right.

Q. And was this agreement actually submitted to the other dealers or was it actually discussed in negotiations?

A. Yes, that was submitted at the time of the two meetings when Conciliator Livingston was present. This is [2778] the contract that was under discussion at that meeting.

Mr. Margolis: If your Honor please, at this time we offer Defendants' Exhibit AA in evidence.



(Testimony of Jeff Kibre.)

Mr. Dixon: No objection.

The Court: Admitted.

(The document referred to was received in evidence and marked Defendants' Exhibit AA.)

Mr. Margolis: Ladies and gentlemen of the jury, this document, which has just been admitted in evidence as Defendants' Exhibit AA, is headed "Southern California Fish Stabilization Agreement," and reads as follows:

(At this point counsel read Defendants' Exhibit AA to the jury.)

Q. (By Mr. Margolis): Now this agreement was never signed, is that right?

A. That is correct.

Q. By any dealer? A. No.

Q. And no master agreement such as is referred to there was ever negotiated, is that right?

A. That is right.

Q. Now on cross examination references was had to Defendants' Exhibit O and the statement made in that letter, which is a letter of June 5, 1944, addressed to all Southern California fish dealers, asking that they meet with you and [2779] concerning which letter you have previously testified.

You were asked about the meaning of the words "stabilizing the industry." Will you explain what you mean by the words "stabilizing the industry" as used in Defendants' Exhibit O?

A. Yes.

(Testimony of Jeff Kibre.)

Mr. Dixon: If the Court please, I think that question is objected to on the ground it is immaterial.

The Court: Objection sustained.

Mr. Margolis: Your Honor please, I would like to direct your Honor's attention to pages 2723 and 2724 in which the witness tried to explain his answer, where the precise question was asked and the Court said, "The witness will be given ample opportunity to explain any position that you deem needs explanation upon redirect examination," and I am asking the precise question which counsel asked on cross.

The Court: He is given that opportunity if it is material. You say it is on what page?

Mr. Margolis: Page 2723. The Witness was asked whether stabilization meant a particular thing, and he said, "That is not the complete meaning of stabilization as we used the term."

The Court: Very well. Let me read it.

Where is the letter that was referred to?

Mr. Margolis: I have it here, your Honor.

(The document referred to was passed to the Court.)

The Court: Let me hear the question.

(The question referred to was read by the reporter as follows:

("Q. Now on cross examination reference was had to Defendants' Exhibit O and the state-

(Testimony of Jeff Kibre.)

ment made in that letter, which is a letter of June 5, 1944, addressed to all Southern California fish dealers, asking that they meet with you and concerning which letter you have previously testified.

“You were asked about the meaning of the words ‘stabilizing the industry.’ Will you explain what you mean by the words ‘stabilizing the industry’ as used in Defendants’ Exhibit O?”)

The Court: I find “stabilized prices and conditions,” “stabilization program.”

Mr. Margolis: I followed the language of the Government’s question, your Honor, which appears at lines 11 and 12 of page 2723.

The Court: Yes, I have seen it.

It seems to me as though the exhibit pretty well speaks for itself. It says, “Many other critical problems, long unsolved.” It is entirely in evidence, is it not?

Mr. Margolis: Yes, your Honor.

The Court: It also states, “In particular, efforts must be made to provide a basis for volume handling of fresh fish, [2781] instead of the customary low poundage operation. Additional facilities are required. Quality, from fisherman to consumer, must be improved. Distribution methods must be modernized and expanded. Funds must be provided for a program of sales promotion.”

(Testimony of Jeff Kibre.)

Mr. Margolis: He was asked what he meant by "stabilizing the industry" and one factor was given. He said he meant a lot of other things and I think he should have a right to say what they are.

The Court: Yes, I think so.

Your answer before is:

"A. That is not the complete meaning of stabilization as we used the term.

"Q. Well, that is one of the meanings, isn't it?

"A. That is one of the meanings, yes.

"Q. There may be others, but at least that is one of them?

"A. There are several other very important factors involved in what we mean by stabilization."

Now your question is, what are those factors?

Mr. Margolis: That is right.

The Court: All right. Objection overruled.

The Witness: The letter of June 5, 1944, indicates very briefly what we proposed when we urged the dealers to join with us in a stabilization program. [2782]

The Court: Are those the other factors? Are they set forth in the letter?

The Witness: Some of the other factors are set forth; yes, your Honor.

Q. (By Mr. Margolis): Are there any additional ones?

A. I was just rereading it to refresh my memory.

Mr. Dixon: If the Court please, I don't think it is proper for this witness to read from some other document. He has been asked a question as to what

(Testimony of Jeff Kibre.)

is meant by stabilization, of what the other meanings of stabilization are, as I recall the question, and he now seeks to refer to some documents to refresh his recollection as to what he thinks stabilization is.

Mr. Margolis: Don't look at the documents, and tell us what you mean by stabilization.

The Court: Counsel, you may return the document to the witness.

Mr. Margolis: We would like to ask him to explain it without reference to the document.

The Court: Just a moment. The question on page 2723 is:

“Q. In the letters which we circularized by Local 36 in June 1944 to all the Southern California fish dealers set forth in your Exhibit O, you state that one of the purposes [2783] was to stabilize the fresh fish industry, is that correct?”

So it is the letter that he is talking about and the letter that he wants to explain, and he says that there are several other very important factors other than price. What are the other important factors?

The Witness: I wanted to confine myself to the letter, as a matter of fact, because I could have answered the general meeting very easily.

The Court: Let's go on.

The Witness: Yes. The points that are made in this letter, a basis for volume handling of fresh fish, that meant to develop a regular fishing fleet which would be available to fish all year 'round and harvest the fish as it was ready for harvest.

(Testimony of Jeff Kibre.)

Additional facilities meant additional facilities for the boats so that they could be properly taken care of in San Pedro.

And facilities which would make it possible to materially increase the volume of fish handled in San Pedro, so that all of the fish could be harvested rather than only a small portion of it as had been customary.

Also what we meant at that time and suggest in the letter was to try to develop a system of quality control, starting with the actual delivery of the harvested fish to the dealer, quality control standards, and then maintain those quality [2784] control standards through the dealer establishments, and finally to the consumer.

And, above all, of course it is suggested here a program of sales promotion to materially widen the market for fish, and several other additional factors which are not included here but implied here, for example—— [2785]

\* \* \*

(At this point a motion picture entitled "The Record of a Typical Market Fishing Trip" was exhibited to the Court.)

Mr. Andersen: We offer that in evidence, your Honor. [2792]

\* \* \*

The Court: \* \* \* On the mater of the offer of proof, I have gone through it and on page 2—well, there are a number of things set forth in here



(Testimony of Jeff Kibre.)

that have already been put in evidence. On page 2, for example, in Southern California it is very common for the price of barracuda offered to fishermen to fluctuate from 5 cents a pound in the morning to 1 cent a [2795] pound in the afternoon. I think there has been some testimony to that effect already.

And over on page 17—

Mr. Margolis: Does your Honor want me to interrupt and comment on this?

The Court: I think that evidence is in.

Mr. Margolis: We wanted to show through books, your Honor, that that was a common situation, and the only way we can show it accurately is through records.

The Court: You say you offer to prove that through the testimony of Jeff Kibre.

Mr. Margolis: What page is that, your Honor?

The Court: 2.

Mr. Rubin: I think counsel is referring to page 17.

Mr. Margolis: This deals with the position of the situation prior to unionization.

The Court: Yes, I understand that. But I think that is already in. And there is considerable testimony referred to in here about the original organization of the union in 1886, and Alaska, and so forth. That is already in. But in any event, that would not be the ground for ruling upon this.

One thing on page 17 and 18 I am not quite clear. You say on page 17, line 21, a paragraph starting with the arabic numeral 2: "Through witnesses from

(Testimony of Jeff Kibre.)

the following named companies” and you name them, and the text then jumps over to line 2 on page 18, “Below is a table setting forth purchases from the areas and for the periods indicated in [2797] said table:”

Do you mean through witnesses from those companies you expect to show what is in the table?

Mr. Margolis: That’s right, your Honor; through witnesses including their books.

\* \* \*

The Court: I just wanted to have it made clear. It wasn’t made clear by this statement.

Exhibits D, H-1, -2, -3, -4; I-1, -2, -3; and K, M and P—I don’t recall offhand what they are.

Mr. Margolis: What we have done, in order to have the record entirely clear, your Honor, is to take all of the exhibits which your Honor has rejected and made them a part of our offer of proof.

Your Honor, we are not making any contention that your Honor has not passed upon these matters. It is precisely that your Honor has passed upon them that we are making our offer of proof.

Mr. Rubin: Exhibit D, if your Honor desires to be refreshed, is a letter, I believe, by the Assistant Attorney [2798] General to the firm of Arnold & Fortes; and the “H” series has to do with some publications of the Bureau of Fisheries, I believe, on some statistical information that was put in for identification, and one of the witnesses was examined, I think Mr. Tendick was examined concerning some of the material on the “H” series.